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Friday
May 23, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in **Washington, D.C.; Chicago, Ill.; Pittsburgh, Pa.; and St. Louis, Mo.**, see announcement in the **Reader Aids** section at the end of this issue.

35032 **Grant Programs—Juveniles** Justice/LEAA announces amendments to previously announced solicitation for grant applications by the National Institute for Juvenile Justice and Delinquency Prevention; apply by 6–25 and 7–3–80

35102 **Minimum Wages** Labor/ESA gives notice of general wage determinations for Federal and Federally assisted construction (Part II of this issue)

34865 **Elections** FEC transmit regulations to Congress to govern application of the Federal Election Campaign Act

35186 **Budget** OMB reports a proposal to rescind $12.4 million in budget authorized previously by Congress (Part V of this issue)

35156 **Oil and Gas** Interior/BLM publishes final regulations regarding changes in the simultaneous oil and gas leasing system, effective 6–16–80 (Part III of this issue)

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Highlights

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There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

34895 **Government** OPM publishes proposed regulations regarding classification under the General Schedule; comments by 7–22–80

34899 **Retirement** PBGC proposes regulations prescribing the rules for determining payment of employer liability for a single employer plan termination; comments by 7–22–80

34910 **Taxes** Interior/HCRS proposes to amend procedures by which owners desiring tax benefits for rehabilitations of historic buildings or demolishing buildings with Registered Historic Districts, apply for certifications pursuant to Tax Reform Act of 1976; comments by 7–22–80

35016 **Oil and Gas** Interior/GS advises public of availability of booklet describing the U.S. Geological Survey's Best Available and Safest Technology program

34886 **Veterans** VA amends regulations governing the effective date of an award of additional compensation, dependency and indemnity compensation, or pension by reason of need for aid and attendance or housebound status; effective 5–13–80

35206 **Natural Gas** DOE/ERA publishes regulations regarding sale and direct industrial use of gas for outdoor lighting; effective 5–23–80 (Part VI of this issue)

34887 **Pipelines** Interior/BLM publishes regulations regarding management of oil and natural gas pipelines and facilities on Federal lands and reimbursement of costs; effective 6–23–80

34871 **Trade Agreements** Trade provides remedies for acts, policies or practices of foreign governments which are inconsistent with international trade agreements; effective 6–23–80

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Appendix II; Appropriate Office for Filing Appeals

AGENCY: Merit Systems Protection Board.

ACTION: Final rules; change of address.

SUMMARY: This document amends Merit Systems Protection Board regulations relating to the appropriate field office for filing appeals. This amendment is necessary because of change of address.

EFFECTIVE DATE: May 23, 1980.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, Jr., Assistant to the Deputy Managing Director—202–254–3063.

SUPPLEMENTARY INFORMATION: 5 CFR, Part 1201, Appendix II, Appropriate Field Office for Filing Appeals is amended by revising paragraph 7 to read as follows:

7. New York Field Office, New Federal Building, 26 Federal Plaza, Room 2341, New York, New York 10278. (New Jersey, New York, Puerto Rico, Virgin Islands.)

Merit Systems Protection Board.

Ruth T. Prokop,

Chairwoman.

[FR Doc. 80–15670 Filed 5–22–80; 8:45 am]

BILLING CODE 6325–20–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

[Amdt. 3]

Acreage Allotments, Marketing Quotas, and Poundage Quotas for 1978 and Subsequent Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: These regulations provide the method for determining a farm yield when nonallotment tracts are placed in combination; authorize the State committee to set the filing date for filing a record of transfer not later than June 14 and extends the date for filing a record of transfer after the normal planting season; implement the provisions of Pub. L. 96–113 (approved November 16, 1979) which exempts monetary penalties on marketing of peanuts grown on State prison farms for consumption within such State prison farms and prohibits the reapportionment of acres released from State prison farms; and announce the basic penalty rate and the reduced penalty rate for unintentional errors for the 1980–81 and subsequent marketing years.

EFFECTIVE DATE: May 22, 1980.

ADDRESSES: Production Adjustment Division, ASCS, USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Paul Kume (ASCS) (202) 447–7935.

SUPPLEMENTARY INFORMATION: Section 729.15 is being amended to provide the method for determining a farm yield when farms are placed in combination if the combination is between (1) allotment and non-allotment farms or (2) non-allotment farms. When farm yields were first determined under the Food and Agriculture Act of 1977, a farm yield was established for each farm on which peanuts were produced during 3 or more of the years 1973–77. The farm yield established was the average of the three highest actual yields per acre on the farm during the crop years 1973 through 1977. If peanuts were not produced on the farm in at least 3 years of the 5-year period 1973–77, the farm yield was appraised based on the farm yield on similar farms. Although a non-allotment farm did not have an established peanut allotment, because of production data during at least 3 or more of the years 1973–77, a farm yield was established for the farm. This amendment provides that when allotment and non-allotment farms are placed in combination, the combined farm will assume the farm yield of the tract with the established allotment even though a farm yield was previously established for the non-allotment tract. The method used to establish the farm yield for farms place in combination is to take the weighted average of the tract yields for each identifiable tract in the combined farm, based on the peanut allotment attributable to each tract and the tract yield for that tract. Since a non-allotment tract does not have a peanut allotment attributed to it, the method for determining the farm yield provided by this amendment is the only acceptable method to use.

This amendment also provides that the farm yield for non-allotment tracts placed in combination shall be appraised even though one or more of the tracts had an established farm yield. This method is the most advisable since the production capabilities for the tracts may have now changed and because there is no peanut allotment attributable to the tracts to obtain a weighted average farm yield.

This amendment provides in § 729.30 that the State committee may set a date for filing a record of transfer. Under this section a transfer may be filed during the normal planting season and after the normal planting season. Transfers filed during the normal planting season must be filed by the date set by the State committee; however, no later than June 14. Transfers filed after the normal planting season must be filed no later than December 31. The State committee has been given the authority to set the filing date during the normal planting season because of the different planting periods in the peanut producing area. The filing of a record of transfer after the normal planting period is extended from November 30 to December 31 because in some peanut producing areas peanuts are being harvested and marketed later, due to a longer growing season and the later date gives

producers an opportunity to transfer poundage quota to or from a farm.

This amendment also provides for accepting the filing of a late-filed record of transfer if certain conditions are met and acceptable to the State and County committees.

This amendment implements the provisions of Pub. L. 96–113, approved November 16, 1979, in § 729.53, which provides that no marketing quota penalty shall be collected on peanuts grown on State prison farms if the peanuts are consumed within the State prison system. The law provides that this provision covers 1978 and subsequent crops.

Under the Food and Agriculture Act of 1977, each peanut farm has an established farm poundage quota which may not be exceeded as quota marketings without marketing quota penalties being assessed. Any peanuts retained or utilized on the farm are considered as marketings of quota peanuts and if the retained or utilized peanuts cause the farm poundage quota to be exceeded, marketing quota penalties are due. The legislation provides an exception for State prison farms from the assessment and collection of mandatory marketing quota penalties. Because the level of production associated with State prison farms is relatively small and peanuts are consumed internally, there is no threat to other commercial peanut enterprises.

The Food and Agriculture Act of 1977 provided that marketing quota penalties shall be assessed at 120 percent of the basic support price for quota peanuts as announced by the Secretary. These rates, as applicable to handlers, are provided in Part 1446 of this title. For the 1980 crop year the basic support rate for quota peanuts has been announced at $455 per ton. Pub. L. 96–31 authorized the Secretary to issue regulations to reduce the amount of penalty (120 percent of the support price for quota peanuts) if the Secretary determines that the excess marketings were done unintentionally or unknowingly and that the reduction in penalty would not impair the effective operation of the price support program for peanuts. The Department felt a reduction in penalty would be desirable in order to provide fair and equitable treatment of producers and handlers.

Marketing quota penalty rates should deter violations and absorb any gain a grower might realize by marketing quota peanuts in excess of the effective farm poundage quota. Accordingly, for the 1978–79 marketing year, the rate announced, applicable to producers, was 10 percent of the basic support price for quota peanuts which was determined to be $42 per ton or 2.1 cents per pound. Under § 729.46, this amendment provides that for the 1979–80 marketing year, the rate announced shall be 20 percent of the basic support price for quota peanuts. In the **Federal Register** of January 25, 1980 (45 FR 6081), the rate for the 1979 crop year was published as $84 per ton or 4.2 cents per pound. By this amendment, it is determined that 20 percent of the basic support price for quota peanuts ($455 per ton) for the 1980 crop year will be $91 per ton or 4.6 cents per pounds.

It is essential that these provisions be made effective as soon as possible since producers and State prison farms are currently making plans for the marketing of the current crop and they need to know the penalty rates and other changes provided by this rule. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553, and Executive Order 12044 is impracticable and contrary to the public interest. Therefore, this amendment to the regulations shall become effective upon the filing of this document with the Director, Office of Federal Register, with respect to the 1978 and subsequent crops of peanuts.

Final Rule

PART 729—PEANUTS

Effective for the 1978 and subsequent crop of peanuts, the regulations in 7 CFR Part 729 are amended to read as follows:

1. Section 729.3 (j) and (11) (2) (i) are revised to read as follows:

§ 729.3 Definitions.

* * * * *

(j) *Excess acreage.* The amount by which the final acreage of peanuts exceeds the effective farm acreage allotment after approval of any transfer agreement (ASCS–375) filed on or before the earlier of: (1) The date the farm operator files a report of the planted acreage of peanuts on the farm, or (2) the date set by the State committee, except that the excess acreage will not be considered as excess acreage when: (i) The final acreage is 1 acre or less, (ii) no acreage and quota has been transferred from the farm or released to the county committee for reapportionment, and (iii) no producer who shares in the peanuts also shares in peanuts on any other farm.

* * * * *

(11) *Undermarketings* * * *

(2) *Effective undermarketings* * * *

(i) The farm shall be an eligible farm if the planted acreage of peanuts in the preceding year was equal to or greater than the product of the national quota factor times the farm acreage allotment in effect after approval of any transfer agreement which was filed on or before the date set by the State committee.

* * * * *

2. Paragraph (a) of § 729.15 is revised to read as follows:

§ 729.15 Determination of farm yield on a farm reconstituted after farm yields have been determined.

* * * * *

(a) *Combinations.* (1) *Allotment farms.* The farm yield shall be the weighted average of the tract yields for each identifiable tract in the combined farm, based on the peanut allotment attributable to each respective tract and the tract yield for that tract.

(2) *Allotment and non-allotment farms.* A combined farm shall assume the farm yield of the tract with an established allotment if placed in combination with a non-allotment tract even though a farm yield previously has been established for such tract.

(3) *Non-allotment farms.* The farm yield for combined non-allotment tracts shall be appraised under section 729.14 by the county committee even though a farm yield previously has been established for such tracts.

* * * * *

3. Paragraphs (b), (d), (g)(1), and (j) of § 729.30 are revised to read as follows:

§ 729.30 Terms and conditions applicable to transfers under Section 358a of the Act.

* * * * *

(b) *Filing Transfer Agreements.* No lease of any quota under this section shall become effective until a record of transfer, determined by the county committee to be in compliance with the provisions of this section, has been executed on Form ASCS–375 and filed within the time periods prescribed in subparagraphs (1) or (2) of this paragraph, with the county committee in the county where the farms are administratively located.

(1) *Transfers filed during normal planting period.* Transfers to be effective beginning with the normal planting period shall be filed by the date set by the State committee which shall be no later than June 14 of the current year. Records of transfer filed after the date set by the State committee but prior to August 16 may be considered timely filed by the date set by the State committee if the county committee with approval of the State committee finds that (i) the lease was agreed upon no later than the date set by the State committee, and (ii) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the lessee or lessor.

Transfer agreements filed or considered as timely filed by the date set by the State committee requires adjustments in the acreage allotments for both the lessor and lessee farms.

(2) *Transfers filed after normal planting period.* Transfers filed under the conditions in paragraph (j)(2) of this section shall not become effective unless filed no later than December 31 of the current year. Records of transfers filed after December 31 but prior to January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that (i) the lease was agreed upon no later than December 31, and (ii) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the lessee or lessor. No adjustments in acreage allotments shall be made for transfers filed under this subparagraph (2).

* * * * *

(d) *Farm poundage quota basis for transfer.* Transfers shall be effected by transfer of farm poundage quota. For a transfer filed (or considered filed) on or before the date set by the State committee under paragraph (b)(1) of this section, the transfer of farm poundage quota will result in adjustment in the farm acreage allotment on the basis of the farm yields for the transferring and receiving farms, respectively. The adjusted acreage shall be determined by multiplying the farm poundage quota transferred by the reciprocal of the national quota factor (1.0 ÷ the national quota factor) and dividing the results by (1) the farm yield for the transferring farm to determine the reduction in acreage for the transferring farm, and (2) the farm yield for the receiving farm to determine the acreage to add to the receiving farm. For transfers filed after the date set by the State committee under the conditions prescribed in paragraph (j)(2), no adjustment in the farm acreage allotments for the transferring and receiving farms shall be made.

* * * * *

(g) *Transfer not to be approved.* * * *

(1) If after approval the total increase in the farm peanut allotment from transfers by purchase in prior years and by lease and purchase in the current year will exceed 50 acres, except that this limitation shall not apply to transfers approved under the conditions of paragraph (j)(2) of this section.

* * * * *

(j) *Transfers to and from a farm.*

(1) *Transfer filed during normal planting period.* The county committee shall not approve a transfer which is filed (or considered filed) on or before the date set by the State committee under paragraph (b)(1) of this section if the approval would result in a transfer both to and from the farm during the period ending on the date set by the State committee of the same crop year; *Provided,* That a transfer may be approved if a poundage quota is transferred temporarily from a farm for 1 or more years (and the transfer remains in effect) and the farm is subsequently combined with another farm that is otherwise eligible to receive poundage quota by transfer.

(2) *Transfer filed after the normal planting period.* A temporary transfer of poundage quota either to or from the same farm (but not both) may be approved by the county committee if filed after the date set by the State committee under paragraph (b)(1) of this section, even though a transfer which was filed before such date is in effect for the farm.

* * * * *

4. Paragraph (e) of § 729.32 is revised to read as follows:

§ 729.32 Release and reapportionment.

* * * * *

(e) *Reapportionment of farm poundage quota.* A farm shall be eligible to receive reapportionment of released poundage quota only if a written request is filed by the farm owner or operator at the office of the county committee pursuant to this section. The farm poundage quota released pursuant to this section, except poundage quota released from State prison farms, may be reapportioned by the county committee to other farms in the same county receiving allotments in amounts determined by the county committee to be fair and reasonable on the basis of land, labor, and equipment available for the production of peanuts; crop-rotation practices; and soil and other physical factors affecting the production of peanuts.

* * * * *

5. Section 729.46 is revised to read as follows:

§ 729.46 Penalty rates.

(a) *Basic penalty rate.* The basic penalty rate is 120 percent of the basic support price for quota peanuts for the current marketing year as provided in Part 1446 of this title.

(b) *Penalty rate for unintentional error.*

(1) *1978–79 Marketing Year*—The penalty rate shall be 10 percent of the basic support price for the current marketing year as provided in Part 1446 of this title.

(2) *1979–80 and Subsequent Marketing Years*—The penalty rate shall be 20 percent of the basic support price for quota peanuts for the current marketing year as provided in Part 1446 of this title.

6. A new section, § 729.53, is added to read as follows:

§ 729.53 Peanuts grown on State prison farms.

Effective with the 1978 crop, no penalty shall be collected on peanuts grown on State prison farms for consumption within such State prison system.

(Secs. 301, 358, 358a, 359, 361–368, 373, 375, 377. 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, 55 Stat. 90, as amended, 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a, 805, 806, 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377); and Sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note); and Sec. 372, 93 Stat. 850 (7 U.S.C. 1372))

Signed at Washington, D.C., on May 15, 1980.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-15566 Filed 5-22-80; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 253; Lemon Reg. 252, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period May 25–31, 1980, and increases the quantity of such lemons that may be so shipped during the period May 18–24, 1980. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective May 25, 1980, and the amendment is effective for the period May 18–24, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action

is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1979–80 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 31, 1979. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on May 20, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is steady.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 910.553 is added as follows:

§ 910.553 Lemon regulation 253.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period May 25, 1980, through May 31, 1980, is established at 280,000 cartons.

(b) As used in this section, "handled" and "cartons" mean the same as defined in the marketing order.

2. Paragraph (a) of § 910.552 Lemon Regulation 252 (45 FR 32308) is amended to read as follows:

§ 910.552 Lemon regulation 252.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period May 18, 1980, through May 24, 1980, is established at 305,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 22, 1980.

D.S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-16052 Filed 5-22-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Order Suspending Certain Provisions and Termination of Proceeding

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules and termination of proceeding.

SUMMARY: This action will continue through August 1980 the present suspension of certain provisions that limit the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to manufacturing plants and still be priced under the order. The suspension is based on a proposal of three cooperative associations considered at a public hearing held for this order on April 22, 1980, in Wilsonville, Oregon. Continuation of the suspension will help the proponent cooperatives to efficiently dispose of milk not needed for fluid use while maintaining producer status for their dairy farmer members regularly associated with the market.

EFFECTIVE DATE: May 23, 1980.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (telephone: 202/447–7183).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing issued April 9, 1980; published April 15, 1980 (45 FR 25407). Order suspending certain provisions issued April 29, 1980; published May 5, 1980 (45 FR 29559).

This order of suspension and termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the order regulating the handling of milk in the Oregon-Washington marketing area.

It is hereby found and determined that for the months of June, July and August 1980 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In the third sentence of paragraphs (a) and (b) of § 1124.11, the word "not".

Statement of Consideration

This action continues through August 1980 the current suspension which removed the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants. The current suspension, which has been in effect since April 1980, expires May 31, 1980 (45 FR 29559). Normally, a cooperative association or other handlers may divert to nonpool plants a total quantity of producer milk not in excess of the total quantity received at a pool plant(s).

The two suspension actions are based upon a public hearing held for this order on April 22, 1980, at Wilsonville, Oregon. Three cooperative associations (Farmers Cooperative Creamery, Corvallis Milk Producers Association and Eugene Farmers' Creamery) that supply the market with a substantial part of its fluid needs and handle significant quantities of the market's reserve milk supplies proposed that emergency action be taken to permit unlimited diversions of producer milk under the order during April through August 1980.

Proponent cooperatives testified that beginning this spring they have experienced problems of maintaining producer status under the order for their member dairy farmers who have been regularly associated with the market. They indicated that beginning with this year's flush period they have been unnecessarily hauling milk to pool plants and then to nonpool plants, rather than by-passing the pool plants, to stay within the diversion limits provided by the order so as to maintain producer status for their members. The cooperatives claim this situation will become more serious during the next several months because milk production of producers on the market is expected to be at seasonally record levels. This situation, according to the proponent cooperatives, is further aggravated by the fact that sales to one of their principal fluid outlets have declined substantially since the beginning of the year because the outlet lost a large wholesale account and another outlet ceased being a pool plant under the order. They indicated that since other fluid outlets in the market are not immediately available the three cooperatives must move to nonpool manufacturing plants the milk formerly moved to these pool plants.

In view of these changes in marketing conditions, the proponent cooperatives expect their reserve milk supplies during April through August 1980 to exceed substantially the quantity of producer

milk that may be diverted under the order's diversion limitations. The cooperatives indicated that without immediate action a large part of the milk of their member producers who have regularly supplied the fluid market would have to be moved uneconomically if such milk is not to be excluded from the pool beginning April 1980. The cooperatives also stated that beginning in September 1980 they except not to have any trouble meeting the order's diversion requirements when the market's supply-demand conditions are expected to return to a more normal pattern.

Because of the urgency of the marketing situation indicated at the hearing and before a complete review could be made of the record evidence and post-hearing briefs, a temporary suspension of the order's diversion limits for April and May 1980 was issued on April 29, 1980 (45 FR 29559). On the basis of an analysis of the hearing record and the post-hearing briefs, it is concluded that the current suspension should be continued through August 1980. Without the suspension the proponent cooperatives would be forced to make uneconomic shipments of a substantial part of their member milk that has been associated with the market on a regular basis in order to qualify it for pooling during the months of June through August 1980.

Mayflower Farms, Inc., a cooperative association who also represents a substantial number of producers on the market, opposed the proponent cooperatives' proposal. The cooperative contended that pooling the increased reserve milk supplies of the proponent cooperatives will "dilute" the pool to the disadvantage of those producers whose milk is needed at pool plants. This, the cooperative argued, would be contrary to the purposes of the order in maintaining orderly marketing. The cooperative maintained proponents did not establish that disorderly marketing conditions exist in the Oregon-Washington market that warrant the emergency action requested.

The opposing arguments are not overriding in this matter. There is no indication that the suspension, which would be effective for only a short period of time, would adversely affect producers as the cooperative contends. Also, it is not likely that the blend prices under the order would be materially enhanced if the diversion limit were continued. The proponent cooperatives have been taking steps to assure the continued pooling of their milk. Presumably, they would continue to do so in the absence of any suspension, even though hauling inefficiencies were involved. Moreover, the additional reserve milk supplies on the market are not the result of new producers coming on to the market but rather the result of increased production of those producers who have been regularly supplying the market's fluid needs, with such increases coming at a time of stagnation in Class I sales.

Any delay in removing the limit on diversions could result in inefficient handling to assure producer milk status for a substantial quantity of the reserve milk associated with the market beginning in June. Therefore, this suspension order is the only practicable means of assuring continued producer status of the proponent cooperatives' dairy farmer members regularly associated with the market for June, July, and August 1980, without them being forced to make uneconomic movements of milk to pool plants and then reship it to nonpool manufacturing plants. There is insufficient time to resolve the diversion problem for June and July 1980 on an amendatory basis. Although amendatory action for August could be accomplished, it appears reasonable to include all three months under the same type of action. It is concluded, therefore, that the requested relief for all three months should be resolved by this suspension and that the hearing proceeding be terminated.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that the most economical method of handling reserve milk supplies is by direct movement from producers' farms to manufacturing outlets. This suspension allows such economical movement of milk while the dairy farmers involved retain producer status;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problem that provides the basis for this suspension action was fully reviewed at a public hearing and all interested parties had the opportunity to be heard on this matter.

It is therefore ordered, that the aforesaid provisions of the order are hereby suspended for June, July and August 1980, and that the proceeding which began April 9, 1980 (Docket No. AO–368–A10) is hereby terminated. (Secs. 1–19, 48 Stat. 31, as amended; U.S.C. 601–674.)

Effective date: May 23, 1980.

Signed at Washington, D.C., on: May 19, 1980.

Jerry Hill,

Deputy Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 80–15871 Filed 5–22–80; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[Notice 1980–21]

Contributions to and Expenditures by Delegates to National Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Final Rule; transmittal of Regulations to Congress.

SUMMARY: The Commission has transmitted regulations to Congress to govern the application of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*), to contributions to and expenditures by delegates to national party nominating conventions. The regulations set forth reporting obligations of delegates and delegate committees under the Act as well as treatment of contributions to and expenditures by delegates and delegate committees.

2 U.S.C. 438(d) requires that any rule or regulation proposed by the Commission to implement Chapter 14 of Title 2, United States Code be transmitted to the Speaker of the House and the President of the Senate prior to final promulgation. If neither House of Congress disapproves the regulation within 30 legislative days after its transmittal, the Commission may finally prescribe the regulation in question. The following regulations were transmitted to Congress on May 14, 1980.

EFFECTIVE DATE: Further action, including the announcement of an effective date will be taken after the regulations have been before Congress 30 legislative days in accordance with 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ann Fiori, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463 (202) 523–4143.

SUPPLEMENTARY INFORMATION: On September 5, 1979, the Commission published an Advance Notice of Proposed Rulemaking on Contributions to and Expenditures by Delegates to National Party Nominating Conventions (44 FR 51962). The regulations transmitted to Congress incorporate suggestions received in response to the

ANPRM as well as provisions required by the enactment on January 8, 1980, of the 1979 Amendments to the Federal Election Campaign Act of 1971 (Pub. L. 96–187).

Under the regulations as proposed and transmitted to Congress, contributions to a delegate for the purpose of furthering that delegate's selection are not subject to the contribution limitations of 2 U.S.C. 441a(a)(1) and (2), but such contributions would still count against the individual contributor's aggregate contribution limit of $25,000 per calendar year under 2 U.S.C. 441a(a)(3). Also, contributions to a delegate by the campaign committee of a presidential candidate receiving public financing would count against that candidate's expenditure limitations.

Expenditures by delegates from their personal funds to defray the costs of advocating their own selection are not limited or reportable by the proposed rules. In addition, expenditures by delegates to defray the cost of certain campaign materials, such as pins, bumper stickers, handbills, brochures, posters and yard signs, which advocate the delegate's selection and also mention a presidential candidate are not limited provided the material is used in connection with volunteer activity. However, expenditures by delegates to defray costs incurred in the use of broadcasting, newspapers, magazines, direct mail or similar types of general public communication or political advertising which advocate the delegate's selection and which also mention a presidential candidate may result in an expenditure which would be either chargeable against the Presidential candidate's expenditure limits, an in-kind contribution by the delegate to the candidate, or an independent expenditure reportable by the delegate. The regulations provide that administrative expenses incurred by State and local party committees in connection with the sponsoring of conventions and caucuses are not reportable under the Act. Similarly, payments made by individuals to qualify as delegates would not be contributions or expenditures under the Act and need not be reported as such. In addition, the regulations define the term "delegate committee" and set out registration and reporting requirements for such committees.

The regulations provide that contributions to and expenditures made by delegates or by delegate committees are subject to the prohibitions of 2 U.S.C. 441b and 441e.

Explanation and Justification of Regulations Concerning Contributions to and Expenditures by Delegates to National Nominating Conventions

These regulations govern contributions to and expenditures by delegates and delegate committees at all levels of the delegate selection process. Funds received or expended to further the selection of a delegate are contributions or expenditures under the Federal Election Campaign Act. Under 2 U.S.C. 431, the terms "contribution" and "expenditure" are defined, in part, to include amounts received or expended "* * * for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i), 431(9)(A)(i). The term "election" is defined to include a national nominating convention, as well as any primary election held to select delegates to such a convention. 2 U.S.C. 431(1) (B) and (C). In addition, the term "federal office" includes the Office of President. 2 U.S.C. 431(3). Amounts received or spent to further the selection of a delegate are received or spent for the purpose of influencing a national nominating convention or for the purpose of influencing a primary election held to select delegates to such a convention. Hence, such amounts fall squarely within the definition of the terms "contribution" or "expenditure" under the Act.

The term "delegate" includes those individuals who seek to become delegates as well as those individuals who are selected as delegates. "Delegate committee" is defined as a political committee which receives contributions or makes expenditures for the purpose of influencing the selection of delegates to a national nominating convention and includes any group of individuals supporting delegates, as well as any group of individuals seeking selection as delegates.

If several persons acting as a group receive contributions or make expenditures in an aggregate amount exceeding $1,000 in a calendar year for the purpose of influencing the selection of any delegate(s), the group is a political committee as defined by 2 U.S.C. 431(4). A delegate committee would be treated as any other political committee is treated under the Act. Thus, delegate committees, by virtue of their status as political committees, must register and report their contributions and expenditures in accordance with 2 U.S.C. 433 and 434. Contributions made by such committees would be subject to limitation under 2 U.S.C. 441a(a); contributions to a delegate committee are subject to limitation under 2 U.S.C. 441a; and all expenditures by such committees must be reported in accordance with the provisions of 2 U.S.C. 434 and 11 CFR Part 104.

A delegate who acts as an individual to further his or her own selection is treated differently under the regulations than a delegate committee. While amounts received or spent by such a delegate are contributions or expenditures, a delegate is not a candidate under the Act. The term "candidate" is defined as "* * * an individual who seeks nomination for election, or election to Federal office * * *" 2 U.S.C. 431(2). Since a delegate does not seek nomination or election to a federal office, he or she is not a "candidate" under the Act.

The Act imposes limitations only on contributions to *candidates* or *political committees*. 2 U.S.C. 441a(a). Thus, contributions to a delegate to further his or her selection as a delegate are not limited by the Act. However, even though no limitation is placed on the amount of a contribution to a delegate, such contributions count against a contributor's $25,000 limitation under 2 U.S.C. 441a(a)(3). Moreover, because the Act imposes reporting requirements only on contributions to candidates and political committees, contributions to a delegate are not required to be reported. In addition, it should be noted that contributions made to a delegate for the purpose of furthering his or her selection are not considered contributions to any presidential candidate, regardless of whether or not the delegate is pledged to or supports a particular presidential candidate.

Because the Act imposes reporting requirements on expenditures by candidates or political committees, expenditures made by a delegate for the purpose of advocating only his or her own selection are neither limited nor reportable under the act. Examples of such expenditures are: travel and subsistence during the delegate selection process, including the national nominating convention; and the costs of any communications advocating only a delegate's selection. Moreover, expenditures of this type are not chargeable against the expenditure limitations of any presidential candidate under the Act.

The Act exempts from the definition of contribution and expenditure the payment by a "candidate * * * to any public office (including State or local office)" of the cost of certain campaign material such as pins, bumper stickers, handbills, brochures, posters and yard signs, which include reference to any other candidate for Federal office, provided that such campaign materials are used in connection with volunteer

activities. 2 U.S.C. 431(8)(B)(xi). This exemption was designed to permit candidates to seek office as a team. 125 Cong. Rec. H7628 (daily ed. Sept. 10, 1979) (remarks of Mr. Frenzel). Since similar campaign activity in the delegate selection process should be encouraged, the subsections governing expenditures by delegates incorporate this exemption.

Thus, expenditures made by a delegate to defray the costs of certain campaign materials (such as pins, bumper stickers, handbills, brochures, posters and yard signs) which advocate the selection of a delegate and which also include reference to any presidential candidate are not subject to limitation and need not be reported under the Act as long as the materials are used in connection with volunteer activities and further, that such expenditures are not for costs incurred for the use of broadcasting, newspapers, magazines, billboards, direct mail or other similar types of general public communication or political advertising.

Expenditures by a delegate to defray costs incurred in the use of broadcasting, newspapers, magazines, direct mail or similar types of general public communication or political advertising which advocate the delegate's selection and which also mention a presidential candidate are not limited or reportable unless the expenditures are either contributions in-kind to the presidential candidate or independent expenditures advocating the election of the presidential candidate. Delegate expenditures which qualify as in-kind contributions, that is, they are made by the delegate in cooperation, consultation or concert with, or at the request or suggestion of the candidate or his or her authorized political committee(s) are subject to contribution limitations, must be reported by the presidential candidate's authorized political committees and, are chargeable against the presidential candidate's statutory expenditure limitations.

Alternatively, expenditures by a delegate to defray the cost incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communications or political advertising are independent expenditures if they are made to expressly advocate the election of a clearly identified presidential candidate and are not made with the cooperation or prior consent of or at the request or suggestion of the presidential candidate. If such independent expenditures by an individual delegate exceed $250 during a calendar year, the delegate must report them in accordance with the Act. (*See* 2 U.S.C. 434(c)).

The general prohibitions of 2 U.S.C. 441b on contributions and expenditures by corporations, labor unions, and national banks apply to all contributions to and expenditures by delegates and delegate committees.

Administrative expenses incurred by State and local party committees in connection with the sponsoring of conventions and caucuses are not reportable under the Act but they may not be paid with contributions which are otherwise prohibited by the Act.

Ballot fees paid to State or local party committees by individuals to qualify as delegates are not contributions or expenditures under the Act. Such payments are not subject to limitation under the Act and they need not be reported by the party committee.

11 CFR Chapter I is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. 11 CFR 100.5(e)(5) is added to read as follows:

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

* * * * *

(e) * * *

(5) *Delegate Committee.* A delegate committee is a political committee which receives contributions or makes expenditures for the purpose of influencing the selection of delegates to a national nominating convention. The term "delegate committee" includes a group of delegates, a group of individuals seeking selection as delegates and a group of individuals supporting delegates. (See definition of "delegate" at 11 CFR 110.14(b)(i).)

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

2. 11 CFR 110.5(d) is added to read as follows:

§ 110.5 Annual contribution limitation.

* * * * *

(d) Contributions to delegates or delegate committees count against the individual contributor's aggregate annual contribution limit in 11 CFR 110.5(a).

3. 11 CFR 110.14 is added to read as follows:

§ 110.14 Contributions to and expenditures by delegates.

(a) 11 CFR 110.14 applies to all levels of a delegate selection process and sets forth the prohibitions, limitations and requirements applicable under the Act to delegates.

(b) *Definitions.*—(1) *Delegate.* "Delegate" means an individual who becomes or seeks to become a delegate, as defined by State law or party rule, to a national nominating convention or to a State, district, or local convention, caucus or primary which is held to select delegates to a national nominating convention.

(2) *Delegate Committee.* A delegate committee is a political committee which receives contributions or makes expenditures for the purpose of influencing the selection of delegates to a national nominating convention. The term "delegate committee" includes a group of delegates, a group of individuals seeking selection as delegates and a group of individuals supporting delegates.

(c) *Contributions to Delegates.* Contributions to a delegate for the purpose of furthering that delegate's selection are not subject to the limitations of 11 CFR 110.1 and 110.2 and 2 U.S.C. 441a(a)(1) and (2); nor are such contributions reportable under 11 CFR Part 104 or 2 U.S.C. 434. (See 11 CFR 110.14(e) for limitations and reporting requirements relating to contributions to delegate committees.) However, if an individual makes such a contribution, it counts against that individual's aggregate contribution limit of $25,000 in a calendar year under 11 CFR 110.5 and 2 U.S.C. 441a(a)(3). Contributions made to a delegate by the campaign committee of a presidential candidate count against that presidential candidate's expenditure limitation under 11 CFR 110.8(a) and 2 U.S.C. 441a(b).

(d) *Expenditures by Delegates.* (1) Expenditures by a delegate from contributions to him or her, or from personal funds, to defray costs incurred to advocate only his or her own selection are neither subject to limitations under 11 CFR Part 110 and 2 U.S.C. 441a nor reportable under 11 CFR Part 104 and 2 U.S.C. 434. (See 11 CFR 110.14(e) for reporting requirements relating to delegate committees.) Such costs may include but are not limited to: costs of travel and subsistence during the delegate selection process, including the national nominating convention, and the cost of any communications advocating only a delegate's selection. Such expenditures are also not chargeable against the expenditure limits of any presidential candidate under 11 CFR 110.8(a) or 2 U.S.C. 441a(b). (2)(i) Expenditures by a delegate from contributions to him or her or from personal funds for costs of certain campaign materials (such as pins, bumper stickers, handbills,

brochures, posters and yard signs) which advocate the selection of a delegate and which also include information on or reference to any candidate for the office of President are not reportable by the delegate under 11 CFR Part 104 and 2 U.S.C. 434. (See 11 CFR 110.14(e) for reporting requirements relating to delegate committees.) Such expenditures are neither contributions to the presidential candidate subject to limitations under 11 CFR 110.1(a) and 2 U.S.C. 441a(a)(1) nor expenditures which count against the expenditure limitation of the presidential candidate under 11 CFR 110.8(a) and 2 U.S.C. 441a(b), provided that:

(A) Such materials are used in connection with volunteer activities; and

(B) Such expenditures are not for costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising.

(ii) Expenditures by a delegate from contributions to him or her or from personal funds for costs incurred in the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising which advocates the selection of a delegate and which also includes information on or reference to a candidate for the office of President are neither subject to limitations under 11 CFR 110.1(a) and 2 U.S.C. 441a(a)(1) and (2), nor reportable under 11 CFR Part 104 and 2 U.S.C. 434, except as provided 11 CFR 110.14(d)(2)(ii)(A)(B). (See 11 CFR 110.14(e) for reporting requirements relating to delegate committees.)

(A)(*1*) Such expenditures are subject to limitations if they are in-kind contributions to the presidential candidate. Such expenditures are in-kind contributions to the presidential candidate under 2 U.S.C. 441a(a)(7) if the delegate makes such expenditures in cooperation, consultation, or concert with, or at the request or suggestion of the presidential candidate, his or her authorized political committee(s), or their agents. Such an in-kind contribution is subject to the contribution limitations of 11 CFR 110.1 and 2 U.S.C. 441a(a)(1) and must be reported by the presidential candidate's authorized committee(s) as a contribution under 11 CFR Part 104 and 2 U.S.C. 434. Except as provided in 11 CFR 110.14(d)(2)(ii)(A)(3). Such in-kind contributions are chargeable against the presidential candidate's expenditures limitation under 11 CFR 110.8(a) and 2 U.S.C. 441a(b).

(*2*) If the delegate finances the dissemination, distribution or republication, in whole or in part, of any broadcast or materials prepared by the presidential candidate, his or her authorized committee(s) or their agents, such expenditure shall not be chargeable against that candidate's expenditure limitations unless it was made with the cooperation, or with the prior consent of, or in consultation with, or at the request or suggestion of, the candidate or any authorized agent or committee thereof.

(B) Such expenditures are not subject to limitations, but are reportable if they are independent expenditures. Such expenditures are independent expenditures under 11 CFR 109.1(a) and 2 U.S.C. 431(17), if they are made to expressly advocate the election of a clearly identified presidential candidate and are not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, the presidential candidate or authorized committee of such candidate. Such independent expenditures are not limited but must be reported by the delegate in accordance with 11 CFR 109.2. and 2 U.S.C. 434(c) and are otherwise subject to the requirements of 11 CFR Part 109. The disclaimer requirements of 11 CFR 110.11 are applicable to such independent expenditures.

(C) Only that portion of such expenditures allocable to the presidential candidate shall be considered an in-kind contribution to the candidate and an expenditure chargeable against the candidate's expenditure limitations. Only that portion of an independent expenditure allocable to the presidential candidate shall be reportable as an independent expenditure.

(D) For purposes of 11 CFR 110.14(d)(2), "direct mail" means any mailing(s) by commercial vendors or any mailing(s) made from lists which were not developed by the delegate.

(e) *Delegate Committees.* Delegate committees as defined at 11 CFR 100.5(e)(5) which qualify as political committees under 11 CFR 100.5 and 2 U.S.C. 431(4) must register with the Commission pursuant to 11 CFR Part 102 and 2 U.S.C. 433, and file reports of contributions received and expenditures made pursuant to 11 CFR Part 104 and 2 U.S.C. 434. Contributions to delegate committees are subject to limitation under 11 CFR 110.1 and 2 U.S.C. 441a(a). Contributions made by delegate committees are subject to limitations under 11 CFR 110.1 and 2 U.S.C. 441a(a).

(f) *Prohibited Sources.* All contributions to and expenditures by any delegate or by a delegate committee are subject to the prohibitions of 11 CFR 110.4(a), Part 114 and 2 U.S.C. 441b and 441e.

(g) *Administrative Expenses of Party Committees and Payments to Qualify as Delegates.* (1) Administrative expenses incurred by local, county, district or State party committees in connection with the sponsoring of conventions or caucuses during which delegates to a national nominating convention are selected, are not reportable under the Act; however, such expenses may not be paid from contributions or expenditures which are prohibited under 11 CFR 110.4(a) and Part 114 and 2 U.S.C. 441b and 441e.

(2) Payments to a State or district party committee by individuals for the purpose of qualifying as delegates would not be contributions or expenditures under the Act, nor would such payments be reportable under 11 CFR Part 104 and 2 U.S.C. 434 or subject to limitation under 11 CFR Part 110 and 2 U.S.C. 441a.

Dated: May 19, 1980.

Max L. Friedersdorf,

Chairman, Federal Election Commission.

[FR Doc. 80-15918 Filed 5-22-80; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0296]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical Amendment to Final Rule.

SUMMARY: This rule change provides a technical amendment advancing the "sunset" provision contained in the final sentence of 12 CFR 265.1a(c) to June 30, 1982, for the delegation of authority contained in § 265.1a(c). This action will continue the delegation of authority by the Board of Governors to any three Board members designated by the Chairman to act on certain matters in the absence of a quorum of the Board where delay would be inconsistent with the public interest.

EFFECTIVE DATE: May 19, 1980.

FOR FURTHER INFORMATION CONTACT: Robert E. Mannion, Deputy General Counsel, 202/452-3274, or Sara A. Kelsey, Attorney, 202/452-3236, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: From time to time, the Board is required to act

upon various matters where a delay in Board action would not be consistent with the public interest. In order to provide for those times when a quorum of the Board may not be available in person to act upon such a matter, 12 CFR 265.1a(c) provides for the delegation of authority by the Chairman. This delegation of authority, added effective August 2, 1978, was to be effective only until June 30, 1980, so that the Board could evaluate its utility for a trial period. Based upon its experience since that time, the Board has determined that this delegation of authority is an effective means of acting promptly on matters to avoid delay that would be inconsistent with the public interest and therefore should be continued. The instant amendment modifies the "sunset" provision contained in the final sentence of 12 CFR 265.1a(c) by continuing this delegation of authority for an additional two years.

The provisions of 5 USC 553 relating to notice and public participation and deferred effective date are not followed in connection with the adoption of this amendment because the change involved herein is technical in nature and does not constitute a substantive rule subject to the requirements of such section. The amendment is effective immediately.

In order to accomplish this purpose, 12 CFR 265.1a(c) is amended by changing the final sentence of that section to read "This delegation of authority shall terminate June 30, 1982."

By order of the Board of Governors of the Federal Reserve System, May 19, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-15916 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Final Rule—Share Accounts and Share Certificate Accounts

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration Board, after considering a final rule adopted by the Depository Institutions Deregulation Committee, has adopted a final rule to permit Federal credit unions to continue to pay dividends on 26-week, $10,000 minimum share certificates (26-week money market certificates) at the originally agreed upon dividend rate for up to seven days after the maturity date. Prior to this amendment, grace periods on 26-week money market certificates were not permitted.

EFFECTIVE DATE: May 21, 1980.

ADDRESS: National Credit Union Administration, 1776 G Street, NW Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Deputy General Counsel, at the above address. Telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: The National Credit Union Administration Board (Board) is amending its regulations to permit Federal credit unions to continue to pay dividends on 26-week money market share certificates for up to 7 days after the certificate matures at the originally specified dividend rate. A Federal credit union may specify in its agreement that a lower rate will be paid during the grace period but that rate cannot be less than that paid on a regular share account.

Prior to this amendment, a grace period was not permitted because the qualifying period had to be exactly 26 weeks and any grace period would violate that restriction. Other types of share certificates were not subject to that same restriction and therefore grace periods had always been allowed. However, there had been no requirements governing grace periods in the past. Grace periods have been permitted to allow for unexpected problems that may arise where a member cannot notify the Federal credit union of his or her intention of what should be done with funds in the share certificate account on the maturity date. The present amendment provides this same flexibility in the case of 26-week money market certificates but limits the grace period to 7 days and it applies whether or not the certificate is automatically renewable. The Board will soon issue a proposed regulation to limit grace periods on all other share certificates to 7 days.

The Depository Institutions Deregulation Committee (Committee) has recently adopted a uniform rule for commercial banks, mutual savings bank, and savings and loan associations. That rule provides that those depository institutions may provide in their time deposit contracts for the payment of interest on funds withdrawn not more than 7 days after a maturity date and the interest rate must be that originally specified unless the contract provides for a lower rate. However, the lower rate cannot be less than that paid on regular savings accounts. The Committee's rule applies to single maturity time deposits as well as to time deposits that are automatically renewable.

Although the Chairman of the NCUA Board is a voting member of the Committee, the uniform rule issued by the Committee does not apply to Federal credit unions. However, as a member of that Committee, the Chairman is responsible for participating in the implementation of the Congressional intent of ultimately eliminating the limitations on the maximum rates of interest and dividends that may be paid on deposits and accounts maintained in the various types of financial institutions as economic conditions warrant and subject to statutory guidelines. Therefore, in the interest of facilitating the equitable administration of rate regulations, it will be incumbent upon the NCUA Board to consider actions taken by the Committee, and, where feasible, to issue conforming regulations. For this reason, the Board, after considering the Committee's final rule on grace periods, has adopted this amendment. The final rule, which removes a restriction, affects only 26-week money market certificates. Federal credit unions have been able to provide grace periods on other types of share certificates but no limitation on grace periods has been imposed. The Board does, however, intend to issue a proposed rule limiting grace periods on all share certificates to 7 days in the interest of uniformity and urges Federal credit unions not to provide grace periods greater than 7 days.

The Board has adopted this amendment after considering the final rule adopted by the Committee referred to above. Because of the action taken by the Committee, the Board finds that application of the notice and public participation provisions of 5 U.S.C. 553 to this amendment is contrary to the public interest and, because it relieves a restriction, publication 30 days prior to its effective date is unnecessary. Also, certain procedures provided for in NCUA's Report on improving Government Regulations were not followed because the process is unnecessary for the public interest. This determination was made by James J. Engel, Assistant General Counsel.

Accordingly, § 701.35 is amended as set forth below.

Rosemary Brady,

Secretary of National Credit Union Administration Board.

May 20, 1980.

(Sec. 107, 91 Stat. 49 (12 U.S.C. 1757), sec. 120 Stat. 635 (12 U.S.C. 1766); sec. 209, 84 Stat. 1104 (12 U.S.C. 1789))

§ 701.35 [Amended]

1. By redesignated § 701.35(c)(2) as § 701.35(c)(2)(i); and

2. By adding a new § 701.35(c)(2)(ii) to read as follows:

* * * * *

(c) * * *
(2) * * *
(ii) * * *

In the case of share certificates issued pursuant to paragraph (g)(5) of this section, the share certificate account agreement may provide for the payment of dividends on withdrawals made not more than 7 days after the maturity date. The agreement may specify that the dividends will be paid at the originally specified dividend rate or at a lower rate but in no event may the rate specified be less than the current rate paid on regular share accounts.

[FR Doc. 80-15932 Filed 5-22-80; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 701

Final Rule—Share Accounts and Share Certificate Accounts

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration Board, after considering a final rule adopted by the Depository Institutions Deregulation Committee, adopted a final rule concerning the treatment of dividends earned on share certificates for purposes of the early withdrawal penalty. This rule amends 12 CFR 701.35 to provide that if a share certificate is automatically renewed at the same terms and conditions, a Federal credit union may pay the dividends earned during any preceding terms as well as during the renewal term without imposition of an early withdrawal penalty. Prior to this amendment, any accumulated dividends became part of the principal amount of the share certificate at the time it was renewed and thus subject to the penalty provisions if withdrawn prior to the renewal maturity date.

EFFECTIVE DATE: May 21, 1980

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Deputy General Counsel, at the above address. Telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: The National Credit Union Administration Board (Board) is amending its regulations governing the payment of dividends earned on a share certificate account after it has been automatically renewed. Under previously adopted rules (June 5, 1979, 44 FR 32202) a share certificate account holder was permitted to withdraw dividends earned on a certificate at any time before maturity without incurring a penalty for early withdrawal. However, any accumulated dividends in the share certificate account at the time of renewal became part of the principal and thus subject to the penalty provisions if withdrawn prior to the renewal maturity date. (44 FR at 32204).

The effect of this amendment is to permit a Federal credit union to pay the dividends earned during any preceding term as well as during the renewal term without imposing an early withdrawal penalty if the share certificate account is automatically renewed at the same terms and conditions (including dividend rate) as initially issued. Thus, where a certificate is automatically renewed at the same terms and conditions, a Federal credit union may permit a certificate holder to withdraw dividends earned during the preceding term or terms as well as during the renewal term without subjecting the certificate holder to early withdrawal penalties. In effect then, dividends earned or accumulated during previous qualifying periods need not be merged with the principal upon renewal of the certificate. It should be noted, however, that a Federal credit union is not precluded from specifying otherwise in its share certificate agreement if it so desires.

The Board has adopted these amendments after considering the final rule adopted by the Depository Institutions Deregulation Committee (Committee) that permits penalty-free withdrawals of interest. That Committee adopted its rule to provide for competitive equality between savings and loan associations, which have been permitted to allow these types of withdrawals, and commercial banks and mutual savings banks, which, as in the case of Federal credit unions, could not. The Board, to avoid placing Federal credit unions at a competitive disadvantage, finds that application of the notice and public participation provisions of 5 U.S.C. 553 to this action is contrary to the public interest and, because it relieves a restriction, publication 30 days prior to its effective date is unnecessary. Also, certain procedures provided for in NCUA's Report on Improving Government Regulations were not followed because the process is unnecessary for the public interest. This determination was made by James J. Engel, Assistant General Counsel.

Accordingly, § 701.35 is amended as set forth below.

Rosemary Brady,

Secretary to National Credit Union Administration Board.

May 20, 1980.

(Sec. 107, 91 Stat. 49 (12 U.S.C. 1757), sec. 120 Stat. 635 (12 U.S.C. 1766), and sec. 209, 84 Stat. 1104 (12 U.S.C. 1789))

Section 701.35(c)(3)(ii) is revised to read as follows:

* * * * *

(c) * * *
(3) * * *
(ii) * * *

A share certificate account holder may withdraw any and all dividends previously paid on a share certificate account during its current qualifying period without incurring a penalty. If the share certificate account is automatically renewed at the same terms and conditions (including the same dividend rate), a Federal credit union may permit a share cerificate account holder to withdraw dividends paid during the preceding qualifying period or periods at any time during the renewal period without penalty, unless the share certificate agreement provides otherwise. If any term or condition of the renewal certificate is different, dividends in the account at the commencement of the renewal period shall be treated as principal and subject to the penalty provisions for early withdrawal. Any amendment to a share certificate account that results in an increase in the dividend rate or a reduction in the qualifying period constitutes a payment of the account before maturity.

[FR Doc. 80-15933 Filed 5-22-80 8:45 am]

BILLING CODE 7535-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2006

Procedures for Complaints Received Pursuant to Section 301 of the Trade Act of 1974, as Amended

AGENCY: Office of the United States Trade Representative.

ACTION: Final regulations.

SUMMARY: This document amends the proposed regulations, published on September 14, 1979 (44 FR 53535), to implement section 301 of the Trade Act of 1974 (19 U.S.C. 2411), as amended by the Trade Agreements Act of 1979 (Pub. L. 96-39, section 901).

Section 301 of the Trade Act of 1974, as amended authorizes the President to provide remedies for acts, policies or practices of foreign governments which are inconsistent with international trade agreements, or otherwise unreasonable, unjustifiable, or discriminatory and burden or restrict U.S. commerce, or against failure of a foreign government to grant United States rights under a trade agreement. Petitions filed under Section 301 will be treated as specified in these regulations.

EFFECTIVE DATE: These regulations shall be effective June 26, 1980.

FOR FURTHER INFORMATION CONTACT: R. Michael Gadbaw, or Alice Zalik (202) 395–3432.

SUPPLEMENTARY INFORMATION: On September 14, 1979, the **Federal Register** published proposed regulations (15 CFR 2006) to implement section 301 of the Trade Act of 1974 (19 U.S.C. 2411), as amended by the Trade Agreements Act of 1979 (Pub. L. 96–39, section 901). Comments were requested by October 14, 1979. Two written comments were received. The regulations, including the changes suggested in the comments, are adopted as revised below. However, additional comments and proposals will be considered and amendments proposed as appropriate.

Comments: No public comments were received. Comments were received from three Government agencies directed to the role of the 301 Committee in the handling of 301 complaints.

Part 2006 is amended by revising the part heading, the Table of Contents and the text to read as follows:

PART 2006—PROCEDURES FOR COMPLAINTS FILED UNDER SECTION 301 OF THE TRADE ACT OF 1974, AS AMENDED

Sec.

2006.0 Submission of petition requesting Presidential action under section 301.
2006.1 Information to be included in petition.
2006.2 Adequacy of the petition.
2006.3 Determinations regarding petitions.
2006.4 Requests for information made to foreign governments and instrumentalities.
2006.5 Procedures upon initiation of investigation: consultations and formal dispute settlement.
2006.6 Termination or suspension of review.
2006.7 Public hearings.
2006.8 Submission of written briefs.
2006.9 Presentation of oral testimony at public hearings.
2006.10 Waiver of requirements.
2006.11 Consultations before making recommendations.
2006.12 Recommendations: time limits.
2006.13 Information open to public inspection.
2006.14 Information not available.
2006.15 Information exempt from public inspection.

Authority: Sec. 306 of the Trade Act of 1974, as amended by sec. 901 of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 299 (19 U.S.C. 2416).

§ 2006.0 Submission of Petition Requesting Presidential Action under Section 301.

(a) Section 301 of the Trade Act of 1974, as amended authorizes the President to provide remedies for acts, policies or practices of foreign governments which are inconsistent with international trade agreements, or otherwise unreasonable, unjustifiable, or discriminatory and burden or restrict U.S. commerce, or against failure of a foreign government to grant United States rights under a trade agreement. Petitions filed under Section 301 will be treated as specified in these regulations.

(b) Petitions may be submitted by an interested party. An interested party is deemed to be a party who has a significant interest; for example, a producer or a commercial importer or exporter of a product which is affected either by the failure to grant rights to the United States under a trade agreement or by the act, policy or practice complained of; a trade association, a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production or wholesale distribution in the United States of a product so affected; or any person representing a significant economic interest affected either by the failure of a foreign government to grant United States rights under a trade agreement or by the act, policy or practice complained of in the petition.

(c) The petition shall be submitted in twenty copies, clearly typed, photocopied or printed to:

Chairman, Section 301 Committee, Office of the United States Trade Representative, 1800 G Street, NW, Washington, D.C. 20506

(d) The telephone number of the Section 301 Committee is (202) 395–3432.

§ 2006.1 Information to be included in petition.

Petitions submitted pursuant to section 301 of the Trade Act of 1974 shall clearly state on the first page that the petition is filed under section 301 of the Trade Act of 1974 and shall contain information reasonably available to the petitioner in substantially the form specified below. Petitioners for whom such information is difficult or impossible to obtain shall provide as much information as possible and assistance in filing their petition may be obtained through the Chairman of the Section 301 Committee. Petitions shall:

(a) Identify the petitioner and the person, firm or association, if any, which petitioner represents and describe briefly the interest of the petitioner which is affected by the failure of a foreign government or instrumentality to grant rights of the United States under a trade agreement or which is otherwise affected by the act, policy or practice which is the subject of the petition.

(b) Describe the rights of the United States being denied under the trade agreement which petitioner seeks to enforce or the act, policy or practice which is the subject of the petition and provide a reference to the particular part of section 301 related to the assertion in the petition.

(c) Include, wherever possible, copies of laws or regulations which are the subject of the petition. If this is not possible, the laws and regulations shall be identified with the greatest possible particularity, such as by citation.

(d) Identify the foreign country or instrumentality with whom the United States has an agreement under which petitioner is asserting rights claimed to be denied or whose acts, policies or practices are the subject of the petition.

(e) Identify the product or service for which the rights of the United States under the agreement, claimed to be denied, are sought or which is subject to the act, policy or practice of the foreign government or instrumentality named in paragraph (d) of this section.

(f) Demonstrate that rights of the United States under a trade agreement are not being provided or show the manner in which the act, policy or practice is inconsistent with the provisions of a trade agreement or otherwise denies benefits due the United States under a trade agreement or is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States' commerce. Provide specific information showing the volume of trade involved and the impact on petitioner and on U.S. commerce. If the petition includes an assertion that subsidy payments are having an adverse effect upon a product or products of the United States in United States' markets or in other foreign markets, it shall include, to the extent possible, the following information:

(1) The volume of trade in the goods or services involved.

(2) A quantification of the economic or other impact on the petitioner and on U.S. commerce in general.

(3) A statement of the manner in which the subsidy complained of is inconsistent with any trade agreement

and the manner in which it burdens or restricts United States' commerce.

(g) State whether petitioner has filed or is filing for other forms of relief under the Trade Act of 1974 or any *other* provision of law.

§ 2006.2 Adequacy of the petition.

If the petition filed pursuant to § 2006.0 does not conform substantially to the requirements of §§ 2006.0 and 2006.1, the Chairman of the Section 301 Committee may nevertheless determine that there is sufficient information on which to proceed to a determination whether to initiate an investigation, or at the request of the petitioner, may return the petition with guidance on making the petition conform to the requirements.

§ 2006.3 Determinations regarding petitions.

Within 45 days after the day on which the petition is received, the U.S. Trade Representative shall determine, after receiving the advice of the 301 Committee, whether to initiate an investigation.

(a) If the U.S. Trade Representative determines not to initiate an investigation, he shall notify the petitioner of his reasons and shall publish notice of the negative determination and a summary of the reasons therefor in the **Federal Register.**

(b) If the U.S. Trade Representative determines to initiate an investigation, he shall publish the text of the petition in the **Federal Register,** and provide an opportunity for the presentation of views concerning the issues.

§ 2006.4 Requests for information made to foreign governments or instrumentalities.

If the U.S. Trade Representative receives a petition alleging violations of any international agreement, he will notify the foreign government or instrumentality of the allegations and may request information, in English, necessary to a determination of the case. The U.S. Trade Representative may proceed on the basis of best information available if, within a reasonable time, no information is received in response to the request.

§ 2006.5 Procedures upon initiation of investigation: Consultations and formal dispute settlement.

(a) If the U.S. Trade Representative determines to initiate an investigation on the basis of a petition, he shall, on behalf of the United States, request consultations with the foreign government or instrumentality concerned regarding the issues raised in the petition.

(b) If the issues in a petition are covered by a trade agreement between the United States and the foreign government involved and a mutually acceptable resolution cannot be reached within the consultation period provided for in the agreement, the U.S. Trade Representative shall institute the formal dispute settlement proceedings, if any, provided for in the agreement. In preparing United States presentations for consultations and dispute settlement proceedings, the U.S. Trade Representative shall seek information and advice from the petitioner and from the appropriate private sector representatives.

§ 2006.6 Termination or suspension of review.

(a) The review of a complaint received under section 301 may be terminated or suspended by the U.S. Trade Representative after receiving the advice of the Section 301 Committee.

(b) Termination or suspension of a section 301 review shall be given effect by notification to the complainant and by publication in the **Federal Register** of a notice and a statement of the reasons for such termination or suspension.

§ 2006.7 Public hearings.

(a) A public hearing shall be held if requested by the petitioner in writing under 302(b)(2):

(1) Within 30 days after the date of an affirmative determination under § 2006.3(b) if the request for public hearing within such period is included with the petition; or

(2) On a date after that period if agreed to by the petitioner; or

(3) At such other time as agreed to by the petitioner if a timely request for a public hearing is made by the petitioner following the filing of the petition.

(b) A public hearing shall be held by the U.S. Trade Representative if requested under section 304(b)(1) by any interested person submitting an application in writing stating briefly the interest of the person requesting the hearing, the firm, person or association he represents and the position to be taken. A hearing so requested shall be held:

(1) Prior to a recommendation that the President take action; or

(2) Within 15 days after the recommendation to the President for action is made, if the U.S. Trade Representative determines that expeditious action is required.

(c) After receipt of a request for a public hearing under section 304(b)(1) of the Trade Act, the Chairman of the Section 301 Committee will notify the applicant whether his request meets the requirements of this part, and if not, the reasons therefor. If the applicant has met the requirements of this part, he will be notified of the time and place of the public hearing.

(d) Notice of public hearings to be held under section 302(b)(2) and 304(b)(1) shall be published in the **Federal Register** by the Chairman of the Section 301 Committee.

§ 2006.8 Submission of written briefs.

(a) In order to participate in the presentation of views either at a public hearing or otherwise, an interested person must submit a written brief before the close of the period of submission announced in the public notice. The brief may be, but need not be, supplemented by the presentation of oral testimony in any public hearing scheduled in accordance with § 2006.6.

(b) The brief shall state clearly the position taken and shall describe with particularity the supporting rationale. It shall be submitted in twenty (20) copies which shall be legibly typed, printed or duplicated.

(c) In order to assure each party an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain rebuttal briefs filed by any party within a time limit specfied in the public notice. Rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as possible.

§ 2006.9 Presentation of oral testimony at public hearings.

(a) A request by an interested person to present oral testimony at a public hearing shall be submitted in writing before the close of the period of submission announced in the public notice and shall state briefly the interest of the applicant. Such request will be granted if a brief has been submitted in accordance with § 2006.7.

(b) After consideration of a request to present oral testimony at a public hearing, the Chairman of the Section 301 Committee will notify the applicant whether the request conforms to the requirements of § 2006.8(a), and, if it does not, will give the reasons. If the applicant has submitted a conforming request he shall be notified of the time and place for the hearing and for his oral testimony.

§ 2006.10 Waiver of requirements.

To the extent consistent with the requirements of the Trade Act of 1974, as amended, the requirements of §§ 2006.0 through 2006.3 and 2006.6 through 2006.8 may be waived by the

U.S. Trade Representative or the Chairman of the Section 301 Committee upon a showing of good cause and for reasons of equity and the public interest.

§ 2006.11 Consultations before making recommendations.

Prior to making recommendations on what action, if any, should be taken in regard to issues raised in the petition, the U.S. Trade Representative shall obtain advice from the appropriate private sector advisory representatives unless expeditious action is required, in which case he shall seek such advice after making the recommendation. The U.S. Trade Representative may also request the views of the International Trade Commission on the probable economic impact of the proposed action.

§ 2006.12 Recommendations: Time limits.

The U.S. Trade Representative, after receiving the advice of the 301 Committee through the TPC or an appropriate subgroup, shall recommend to the President what action, if any, should be taken under Section 301 with respect to the issues raised in the petition not later than:

(a) Seven months after the date of the initiation of the investigation if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Applications of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade;

(b) Eight months after the date of the initiation of the investigation if any matter covered by the Subsidies Agreement other than only an export subsidy is alleged in the petition;

(c) Thirty days after the conclusion of the dispute settlement procedure where the petition raises issues covered by a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement);

(d) 12 months after the date of investigation initiation in cases not included under paragraphs (a), (b), or (c) of this section

§ 2006.12 Information open to public inspection.

(a) With the exception of information subject to § 2006.14, an interested person may, upon written request, inspect at the office of the Chairman of the Section 301 Committee:

(1) Any written petition, brief, or similar submission of information made pursuant to section 301.

(2) Any stenographic record of a public hearing held pursuant to section 301.

(3) Information on the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular products or services, to the extent that such information is available to the U.S. Trade Representative or other Federal agencies.

(4) Information on the rights of the United States under any trade agreement and the remedies which may be available under the agreement and under the laws of the United States.

(b) Fees will be charged for duplication of documents requested in accordance with the fee schedule and payments provisions of 15 CFR 2004.9 and 2004.10.

§ 2006.14 Information not available.

If the U.S. Trade Representative does not have, and cannot obtain from other federal agencies, information requested in writing, by any person, he shall, within 30 days after the receipt of the request—

(a) Request the information from the foreign government involved; or

(b) Decline to request the information and inform the person in writing of the reasons for the refusal.

§ 2006.15 Information exempt from public inspection.

(a) The Chairman of the Section 301 Committee shall exempt from public inspection business information submitted in confidence if he determines that such information involves trade secrets or commercial and financial information the disclosure of which is not authorized by the person furnishing such information nor required by law.

(b) A party requesting that the Chairman exempt from public inspection business information submitted in writing shall clearly mark each page "Business Confidential" at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide the Chairman of the Section 301 Committee with a written explanation of the reasons the material should be so classified.

(c) The Chairman may deny a request that he exempt from public inspection any particular business information if he determines that such information is not entitled to exemption under law. In the event of a denial, the party submitting the particular business information will be notified of the reasons for the denial and will be permitted to withdraw the submission.

R. Michael Gadbaw,

Chairman, Section 301 Committee.

[FR Doc. 80-15930 Filed 5-22-80; 8:45 am]

BILLING CODE 3190-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Standard To Be Applied by the Commission in Disapproving Contract Market Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Agency Interpretation.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is announcing its interpretation of the standard to be applied to contract market rules submitted for Commission approval pursuant to Section 5a(12) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(12) (1976), as amended by 92 Stat. 871 (1978), and Rule 1.41 of the Commission's regulations, 17 CFR 1.41 (1979). Under this interpretation, the Commission may disapprove contract market rules which conflict or are inconsistent with the policies, purposes and public interests embodied in the Act as well as the provisions of the Act and the Commission's regulations.

EFFECTIVE DATE: May 23, 1980.

FOR FURTHER INFORMATION CONTACT: Nancy Yanofsky, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-9880.

SUPPLEMENTARY INFORMATION: Under the Act, futures contracts may lawfully be traded only through the facilities of boards of trade—commodity exchanges—which have been designated as contract markets by the Commission.[1] In 1974, when Congress extensively amended the Act, Congress understood that contract market "self-regulation had become noticeably ineffectual" and, therefore, a strong federal regulatory umbrella was needed "to insure the efficacy of the regulatory efforts undertaken by exchanges."[2] It has been recognized that

> "[t]he mainstay of this umbrella, Congress decided, would be the CFTC. Armed with strong regulatory powers, the CFTC was designed to guarantee 'fair practices and honesty on the exchanges' and curb 'speculative activities that periodically demoralize markets.' "[3]

Under section 5a(12) of the Act, contract markets must submit for Commission approval most contract market rules relating to terms and

[1] Section 4 and 4h, 7 U.S.C. 6 and 6h (1976).

[2] *Smith* v. *Groover*, 468 F. Supp. 105, 109-110 (N.D. Ill. 1979), citing H.R. Rep. No. 975, 93d Cong., 2d Sess. 48 (1974) ("1974 House Report").

[3] *Id.*, quoting from 120 Cong. Rec. 30458 (1974) (remarks of Senator Herman Talmadge).

conditions in futures contracts and other trading requirements before those rules may be made effective.[4] The Commission is authorized to approve only those contract market rules which are "not in violation of the provisions of this Act or the regulations of the Commission * * *" (Section 5a(12)). Consistent with this authority, Section 5a(12) empowers the Commission to "disapprove * * * (a contract market rule) which the Commission finds at any time is in violation of the provision of this Act or the regulations of the Commission."[5]

Among these provisions is the requirement in Section 5(g) of the Act, 7 U.S.C. 7(g), which also was added in 1974, that futures trading in a particular commodity not be "contrary to the public interest."[6] One of the components of the public interest standard in Section 5(g) is an economic purpose test.[7] The Committee of Conference on the 1974 amendments emphasized that Section 5(g) "would include the concept of the 'economic purposed test * * * subject to the final test of the 'public interest.'"[8] Thus, consistent with Section 5(g), the Commission has the responsibility under Section 5a(12), in determining whether a proposed rule is in violation of the provisions of the Act or Commission regulations, to consider whether the rule will be contrary to the economic purposes and other public interests embodied in the Act.

Congress has expressly defined several of the public interests to be considered by the Commission in connection with contract market rules. Section 8a(7) of the Act, ss amended in 1974, 7 U.S.C. 12a(7) (1976), authorizes the Commission, after first requesting the contract market to change one of its rules, to alter or supplement the contract market's rule if the Commission determines that

> "such changes are necessary or appropriate for the protection of persons producing, handling, processing or consuming any commodity traded for future delivery on such contract market, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such contract market."

A contract market rule proposal which the Commission determines will hamper the protections afforded traders, for example, is thus inconsistent with the public interest test of Section 5(g) as expounded by Section 8a(7).[9]

In addition, when Congress amended the Act in 1974 it also added Section 15, 7 U.S.C. 19. Section 15 specifically directs the Commission, in considering whether to approve contract market rules, to take into account the public interests served by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives, policies and purposes of the Act. Section 15, therefore, contemplates that under Section 5a(12) the Commission will disapprove, or attempt to modify, a contract market rule which would have serious anticompetitive effects that are not outweighed by the policies and purposes of the Act to be served by the rule. Congress understood that the objectives of the Act would be a paramount consideration in a Commission determination whether to approve a contract market rule.

It is the view of the Commission that these provisions of the Act demonstrate that Congress did not intend to limit the Commission's authority to disapprove a contract market rule under Section 5a(12) merely to those rules which are directly contrary to a specific substantive or procedural requirement of the Act or the Commission's regulations. Rather, the Commission understands its statutory responsibility to disapprove as well those contract market rules which conflict or are inconsistent with any of the policies, purposes and public interest considerations embodied in the Act and the Commission's regulations.

A more limited construction of the Commission's rule disapproval authority—whereby the Commission could disapprove only those rules which directly conflict with a provision of the Act or the Commission's regulations—would lead to a somewhat anomalous result. Under this approach, for example, the Commission would be required to approve a contract market rule which did not directly conflict with a provision of the Act even though the Commission determined that the rule would result in inadequate protection to traders, an express basis for the Commission to alter or supplement a contract market rule under Section 8a(7). Therefore, the contract market rule would be approved by the Commission and placed into effect under Section 5a(12), and the Commission could, under Section 8a(7), immediately request the contract market to alter or supplement that rule. This would create instability and uncertainty in the contract market rule approval process. Market participants and the contract markets are entitled to expect a rule approval process which will permit them generally to rely upon a rule approved by the Commission, rather than waiting to see if the rule would be amended at the Commission's direction shortly after approval had been granted.[10]

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[4] The Commission has defined these contract market rules as "reviewable rules" in Commission Rule 1.41(a)(2), 17 CFR 1.41(a)(2) (1979). Consistent with the provisions of Section 5a(12), the Commission has also specified those operational, administrative and temporary emergency rules which need not be submitted for approval by the Commission before being placed into effect. *See* Commission Rules 1.41(c) and (f), 17 CFR 1.41(c) and (f) (1979).

[5] In general, rules do not violate a statutory provision in the traditional sense of the term "violate." Intead, persons violate provisions of the Act or regulations. Rules, however, may be in conflict or inconsistent with or contrary to other provisions of law. Accordingly, the Commission construes the term "violation" in Section 5a(12) to embrace rules which are in conflict or inconsistent with or contrary to the Act or the regulations of the Commission.

[6] Section 6 of the Act, 7 U.S.C. 8, makes this requirement, among others, a prerequisite to and continuing condition of a contract market's designation. For example, if the Commission found that trading in a particular futures contract was no longer in the public interest, the Commission could suspend or revoke the contract market's designation. *See* Section 6b, 7 U.S.C. 13a (1976).

[7] S. Rep. No. 1194, 93d Cong., 2d Sess. 36 (1974) (Report of the Committee of Conference). The Commission has advised Congress that if a proposed rule did not serve a valid economic purpose, the Commission would disapprove the rule under Section 5a(12). In connection with the 1978 amendments to Section 5a(12) of the Act, the Commission explained to the Committee of Conference that "the Commission, consistent with the requirement of Section 5(g), presently analyzes the economic purpose of proposed exchange rules, particularly as to whether they conform to commercial practices, and would disapprove those that do not serve a valid economic purpose." (Letter of August 8, 1978, from chairman William T. Bagley, for the Commission, to Senator Herman E. Talmadge and Representative Thomas S. Foley.)

[8] S. Rep. No. 1194, 93d Cong., 2d Sess. 36 (1974) (Report of Committee of Conference).

[9] *See also* Section 3 of the Act, 7 U.S.C. 5, which sets forth basic policies and purposes of the Commodity Exchange Act.

[10] Under the Commission's intrepretation of Section 5a(12), Section 8a(7) could be used to alter or supplement contract market rules which have previously received Commission approval in order to cure defects in rules that operate against the interests protected by Section 8a(7). Of course, at the time that the Commission approved such rules, it would anticipate that the rules would or might reasonably be expected to comport with the public interests set forth in Section 8a(7). However, a change in market conditions may take place to which the contract market may not respond in a manner consistent with a particular interest defined in Section 8a(7). In addition, a contract market rule could be applied in a manner contrary to the Commission's expectation when it approved the rule. Or, the Commission may adopt a regulation, subsequent to its approval of a contract market rule, which conflicts with the rule. Section 8a(7) could be used in any of these circumstances. In this connection, the Commission is of the view that it is authorized to revoke a contract market rule under Section 5a(12) or to effect a revocation under Section 8a(7). Section 5a(12) authorizes the Commission to approve contract market rules and "thereafter * * * [to] disapprove * * * (any contract market rule) which the Commission finds *at any time* is in violation of the provisions of this Act or the regulations of the Commission." (Emphasis added). Thus, the Commission is authorized to disapprove a rule, even though that rule has previously received Commission approval, if after reviewing the operation of the rule the

Footnotes continued on next page

The Commission's interpretation of its rule disapproval authority is fully consistent with the legislative evolution of these statutory provisions. In 1968 Congress enacted Section 8a(7) of the Act, which authorized the Secretary of Agriculture to disapprove any contract market rule which "violates or will violate any of the provisions of this Act, or any of the rules, regulations or orders * * * [adopted] thereunder." *See* Pub. L. No. 90–258, section 23(b), 82 Stat. 26 (1968).[11] Congress granted this authority to the Secretary despite the vigorous protests of most contract markets.[12] The rationale for the rule disapproval authority was provided by George L. Mehren of the Department of Agriculture who stated:

> It seems obvious that when there is a conflict between an exchange rule and the law, or regulations, or orders issued pursuant to authority granted by the law, the exchange rule should be revoked or so changed as to bring it into compliance.[13]

In 1974, Congress amended Section 8a(7) by removing the rule disapproval authority from that Section and placing it in Section 5a(12) and by further amending Section 8a(7) to authorize the Commission to alter or supplement contract market rules.[14] The rationale for the amendments to Section 8a(7) and the enactment of Section 5a(12) was provided by Dr. Clayton Yeutter, Assistant Secretary of Agriculture, who stated that the proposed provisions

> * * * would extend to the Commission even broader authority * * * to make certain that in every instance the rules protect all traders and the public and provide for orderly trading in futures contracts.[15]

In 1978, Congress again addressed the Commission's authority to approve or disapprove contract market rules. As amended in 1978, Section 5a(12) requires the Commission to provide notice and opportunity for public comment prior to approving contract market rules the Commission determines to be of major economic significance. The sponsor of the amendment, Representative AuCoin, stated that the amendment was necessary because the absence of a provision for public notice regarding proposed rule changes

> is disturbing when one considers that the Commission is a public agency charged with insuring that the public interest is adequately served and protected in rules and regulations promulgated by the private contract markets.[16]

Thus, the sponsor of the 1978 amendment to Section 5a(12), understood the Commission's authority under that Section to incorporate the public interests and purposes served by the provisions of the Act and the Commission's regulations.[17]

The 1978 amendment to Section 5a(12) underscores the propriety of the Commission's interpretation of its contract market rule disapproval authority. The purpose of this amendment was to ensure that the Commission would receive public comments on contract market rules of major economic significance. The publication requirement evidences Congress' intent that the Commission be responsive to concerns expressed by producers, traders or other members of the public and to disapprove those rules which do not serve a valid economic purpose or are contrary to the other public interests of the Act. Thus, the Commission intends to construe its rule disapproval authority in a manner which will ensure that all rules approved by the Commission under Section 5a(12) comport with the policies, purposes and provisions of the Act and regulations.

The Commission has received correspondence from three boards of trade concerning this interpretation of its rule disapproval authority. In essence, these exchanges disagree with the Commission's view and have asked the Commission to defer publishing its interpretation until an opportunity is provided for public comment on the interpretation.

The Commission appreciates that these boards of trade and others may not concur in the Commission's interpretation of its rule disapproval authority. In this connection, the Commission welcomes comments from all persons concerning this interpretation. Nevertheless, the Commission is announcing a general statement of its present policy concerning the rule disapproval authority vested in it under the Act. This policy does not impose any new obligations upon any entity. Congress has made plain that general statements of agency policy or interpretative rules are exempt from the requirement of notice and public comment applicable to agency rule making proceedings. *See* 5 U.S.C. 553(b)(A) (1976).

The Commission emphasizes that it is merely notifying the public that the Commission intends to apply this interpretation and policy to contract market rules which have been or will be submitted under Section 5a(12). Prior to disapproving a contract market rule, the Commission will provide the affected contract market and, wherever practicable, the public with notice and opportunity to comment upon the rule and the grounds the Commission may rely upon to disapprove the rule. Of course, during this comment process, the public may comment upon the Commission's interpretation of its rule disapproval authority as well as the specific application of the policy to the contract market rule at issue. The Commission believes that comment on this interpretation will be most meaningful in the context of a concrete disapproval proceeding involving a particular contract market rule.

Issued by the Commission on May 19, 1980.

Jane K. Stuckey

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 80–15814 Filed 5–22–80; 8:45 am]

BILLING CODE 6351–01–M

Footnotes continued from last page
Commission finds that the rule in practice operates contrary to the policies, purposes or provisions of the Act or regulations.

[11] Prior to the 1974 amendments to the Act, which established the Commission, the Act was administered by the Commodity Exchange Authority within the Department of Agriculture.

[12] *Hearings Before the House Committee on Agriculture on H.R. 11930 and H.R. 12317*, 90th Cong., 1st Sess. 24–25, 89 and 111 (1967) ("1967 House Hearings"). Only one contract market supported the enactment of Section: 8a(7). A representative of the Chicago Mercantile Exchange stated that "there might be a need to have some Government supervision of our rulemaking functions in order to secure a semblance of immunity from the antitrust law." 1967 House Hearings at 136. That contract market also testified that the Secretary of Agriculture's authority under Section 8a(7) should be broadened so that the disapproval could be based upon a finding that the rule is "not in the best interests of the investors and traders in cash and futures commodities." *Id.* at 136.

[13] *Id.* at 49. In 1968 Congress also enacted Section 5a(8) which imposed a duty on contract markets to enforce those rules which had not been disapproved by the Secretary of Agriculture. *See* 7 U.S.C. 5a(8) (1970). Congress considered Section 5a(8) to be necessary because the contract markets had failed to enforce their own rules. S. Rep. No. 947, 90th Cong., 2d Sess. 2–3 (1968). *See also*, 1967 House Hearings at 50 (statement of George L. Mehren).

[14] *See* Pub. L. No. 93–463, §§ 210 and 213, 88 Stat. 1401–1402 and 1404 (1974).

[15] 1974 House Report at 78. Congress amended Section 8a(7) in response to a particular problem regarding self-regulation. The House reported that allegations had been made that, in order to circumvent the statutory requirement of enforcing their rules, contract markets were reducing the number of their regulations designed to insure fair trading. 1974 House Report at 44–48. Thus, Congress empowered the Commission to change or supplement contract market rules under Section 8a(7) to assure that contract markets would have adequate rules to protect the integrity of the marketplace. *See Smith* v. *Groover*, 468 F. Supp. 105, 118 (N.D. Ill. 1979).

[16] 124 Cong. Rec. H7312 (daily ed., July 26, 1978).

[17] *See also* 124 Cong. Rec. H7313 (daily ed., July 26, 1978) (remarks of Representative Glickman: "in many cases the Board of Trade rules are more significant than those the Commission promulgates").

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 276

[Release No. IA-721]

Contingent Advisory Compensation Arrangements

AGENCY: Securities and Exchange Commission.

ACTION: Statement of staff interpretive position.

SUMMARY: The Commission is announcing the interpretive views of its Division of Investment Management ("staff") as to the application of the performance fee prohibitions of the Investment Advisers Act of 1940 ("Advisers Act") to investment advisory compesnation arrangements which are contingent on the investment performance of the funds of advisory clients. The purpose of this release is to provide general interpretive guidance to the public regarding the application of the Advisers Act to the variety of contingent advisory compensation arrangements which have come to the staff's attention, and thereby to obviate the need for further requests for staff interpretive or no action advice concerning such compensation arrangements where the requests do not present any novel factual or interpretive issues.

EFFECTIVE DATE: May 16, 1980.

FOR FURTHER INFORMATION CONTACT: Michael J. Eizelman, Esq., (202) 272-2079, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 205(1)[1] of the Advisers Act,[2] with certain exceptions, prohibits an investment adviser, unless exempt from registration pursuant to Section 203(b) of the Advisers Act,[3] from entering into, extending, renewing or performing any investment advisory contract which "provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client." The staff's position, as previously articulated in a number of no action and interpretive letters, is that Section 205(1) generally prohibits an investment adviser from being a party to any advisory contract which provides that advisory fees will be waived or refunded, in whole or in part, if a client's account does not meet a specified level of performance or which otherwise makes receipt of advisory fees contingent on the investment performance of the funds of advisory clients.[4] In the view of the staff, the realization of "contingent" fees is dependent on a client's account achieving a specified level of capital gains or appreciation. Thus, such fees, in effect, are based on a share of capital gains or appreciation of the funds of a client within the meaning of Section 205(1), and are therefore proscribed by that section.[5]

Section 205(1) of the Advisers Act was intended "to prohibit arrangements for contingent compensation to investment advisers based on profit-sharing arrangements with clients which encourage advisers to take undue risks with the funds of clients."[6] The concerns about undue speculation[7] which prompted the Congress to adopt Section 205(1) are as opposite to advisory fees which are contingent upon an advisory account obtaining a certain level of performance as they are to fees which vary directly with capital gains or appreciation. For example, an investment adviser whose compensation was contingent on a discretionary account achieving a certain level of performance might be inclined to purchase for the account speculative securities, involving a high potential reward and a high risk, if the account's value was below that necessary for the adviser to earn his fee. In this regard, the Commission report which helped form the basis for the Advisers Act contained the following views of industry representatives:

> Arrangements for contingent compensation to investment counselors, such as percentage of profits, [were] strongly condemned [by industry representatives] as inimical to the interest of the client, for . . . , aside from the 'heads I win, tails you lose' aspect of such arrangements, such a basis for compensation 'encouraged the advisor to recommend a degree of risk that the investor himself would not knowingly undertake, inasmuch as the advisor has everything to gain if he is successful and nothing to lose if he is wrong' and may have been a strong temptation to take unusual risks, to speculate or to overtrade.[8]

To the extent there is any question as to whether Section 205(1) directly prohibits contingent advisory compensation arrangements, the staff believes that such arrangements are prohibited by Section 208(d) of the Advisers Act.[9] Section 208(d) provides, among other things, that it shall be unlawful for any person indirectly to do any act or thing which it would be unlawful to do directly under the provisions of the Advisers Act. If Section 208(d), together with Section 205(1), were not construed to prohibit contingent advisory compensation arrangements, an investment adviser who was subject to Section 205(1) could employ indirectly a compensation arrangement which was the practical equivalent of a fee structure directly proscribed by Section 205(1) and thereby frustrate the prophylactic purposes of that section. For example, rather than charging a fee which was a direct share of the capital appreciation of a client's account, and which was thus expressly prohibited by Section 205(1), a registered investment adviser might choose to approximate such a fee by charging a fixed fee which it would agree to waive or refund, in whole or in part, if the client's account did not achieve a specified level of appreciation.

Among the proposed contingent advisory compensation arrangements that have come to the attention of the staff are those in which (i) fees are waived or refunded, in whole or in part, by an adviser if a specified level of investment performance in a client's account is not achieved,[10] (ii) fees are contingent upon an advisory account having sufficient capital gains or appreciation during a specified period to

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[1] 15 U.S.C. 80b-5(1).

[2] 15 U.S.C. 80b-1 *et seq.*

[3] 15 U.S.C. 80b-3(b).

[4] *See, e.g.*, McCuen & Russell, Inc. (avail. Apr. 27, 1979); Tessco Management Corporation (avail. Apr. 24, 1979); V. L. McKenzie (avail. Sept. 29, 1975); Bruce Bennett (avail. May 10, 1973); and Robert Reinhart, Jr. (avail. Sept. 21, 1971), reprinted in [71-72 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶78,464.

[5] Section 205(1), by its express terms, applies only to compensation arrangements based upon a share of capital gains or appreciation of the funds of an advisory client. Thus, the Advisers Act does not prohibit, for example, a fee arrangement based upon the interest income (exclusive of capital gains or appreciation) derived from the funds of a client, assuming, of course, compliance with the antifraud provisions of Section 206 thereof. *See, e.g.*, Welch & Forbes, Inc. (avail. Jan. 26, 1974).

[6] H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940).

[7] *Id. See also* Hearings on S. 3580 before Subcomm. of Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., pt. 1, at 252 (1940). For a discussion of the legislative history of the prohibition against profit-sharing and other contingent fee arrangements, *see* SEC Institutional Investor Study Report, H.R. Doc. NO. 64, 92d Cong., 1st Sess., pt. 1, 259-263 (1971).

[8] *See* Securities and Exchange Commission. *Investment Counsel. Investment Management. Investment Supervisor and Investment Advisory Services*, H.R. Doc. No. 477, 76th Cong., 2d Sess. at 30 (1939).

[9] U.S.C. 80b-8(d).

[10] *See, e.g.*, McCuen & Russell, Inc. (avail. Apr. 27, 1979).

pay the fees,[11] (iii) fees are waived if recommended securities do not appreciate in value within a designated period of time,[12] and (iv) fees are contingent upon an account either not decreasing in value or avoiding a specified amount of capital depreciation.[13] For the reasons discussed above, the staff believes that the foregoing contingent advisory compensation arrangements, which each pose the inherent conflicts of interest that Section 205(1) was intended to prevent, are properly characterized as involving a fee based upon a share of capital gains or appreciation of the funds of a client and, are thus, proscribed by Section 205(1).

The general interpretive guidance provided in this release should obviate the need, in most instances, for further requests for no action or interpretive advice from the staff relating to contingent advisory compensation arrangements. Accordingly, the staff will not respond to such requests unless they present novel factual or interpretive issues, such as departures from the specific contingent compensation arrangements described above.

Part 276 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding Investment Advisers Act Release No. IA-721—Statement of the staff as to the application of the Investment Advisers Act to contingent advisory compensation arrangements.

By the Commission.

George A. Fitzsimmons,

Secretary.

May 16, 1980.

[FR Doc. 80-15892 Filed 5-22-80; 8:45 am]

BILLING CODE 8010-01-M

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[11] *See.* e.g., Stanley F. Raczynski (avail. Dec. 5, 1973).

[12] *See.* e.g., V. L. McKenzie (avail. Sept. 20, 1975).

[13] *See. e.g.*, Pension Investment Associates of America (avail. Jan. 25, 1977). Although an argument could be made that Section 205(1) literally does not extend to fees based upon "negative" capital gains or appreciation, the staff believes that, for the reasons discussed above regarding contingent fees in general, such fees come within the purview of Section 205(1). As one commentor has observed: "It seems . . . clear that, in a falling market, an adviser may not [under Section 205(1)] compensate himself on the basis of a percentage of the saving of capital loss or depreciation which he has effected by selling out certain securities and buying others whose market price did not fall as much; such a scheme of compensation, which is in effect based on a share of 'negative gains,' involves the same temptations as a profit-sharing scheme which comes within the letter of the statutory provision." 2 Loss, Securities Regulation 1411 (2d Ed. 1961).

DEPARTMENT OF STATE

Office of the Secretary

22 CFR Part 143

[Departmental Regulation 108.789]

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

Correction

In FR Doc. 80-14872 appearing at page 31713 in the issue for Wednesday, May 14, 1980, second column, the Departmental Regulation number should have appeared as set forth above.

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 219

[Docket No. R-80-810]

Flexible Subsidy Program; Interim Rule

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule.

SUMMARY: This interim rule amends Part 219 of Title 24 of the Code of Federal Regulations, to provide for funding of eligible projects having HUD rent supplement contracts and which are in need of additional funding due to rent increases.

EFFECTIVE DATE: June 22, 1980.

COMMENTS DUE: July 22, 1980.

ADDRESS: Comments should be submitted to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Occupancy Division, Office of Multifamily Housing Management and Occupancy, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 426-8730. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development has exhausted its appropriated rent supplement contract and budget authority funds, which it uses to fund rent supplement contract increases. These contract increases are needed to cover the Department's share of payments toward the tenants' rents brought about by HUD approved rent increases. The Department received no additional contract or budget authority in its FY 1980 appropriations. Accordingly, the Department is amending 24 CFR Part 219 on an interim basis, effective June 22, 1980.

24 CFR Part 219 is itself an interim rule which was published on May 21, 1979, and this amendment does not change any aspect of the interim rule; it provides, merely, for funding of eligible projects that otherwise would have received rent supplement payments. The Department is evaluating, at present, the comments received during the published Interim rules comment period and will also evaluate the comments received on this amendment prior to formulating and issuing its final regulation.

This amendment is consistent with Sec. 201 of the HUD Amendments of 1978 which states "the purposes of this Section are to provide assistance to restore or maintain the financial soundness, to assist in the improvement of the management, and to maintain the low-to-moderate income character of certain projects assisted or approved for assistance under the National Housing Act or under the Housing and Urban Development Act of 1965." Failure on the part of HUD to fund those projects which are in need of additional Rent Supplement Authority would lead to their financial and physical deterioration. Since there is no Rent Supplement Contract Authority available, those HUD Insured or Held projects which have rent supplement contract under Section 101 of the Housing and Urban Development Act of 1965 in need of additional Rent Supplement Contract Authority are eligible under this program. Any project receiving flexible subsidy payments in lieu of rent supplement payments and which would also qualify for assistance under 24 CFR Part 219, as published on May 21, 1979, may also receive additional flexible subsidy payments.

The Secretary has determined that it is urgent to make this rule effective as soon as possible, in order to avoid the financial and physical deterioration of rent supplement projects. Since providing an opportunity for public comment on this rule prior to its effective date would delay it for a substantial period of time, the Secretary has found that such rulemaking procedure would be contrary to the public interest. Accordingly, this amendment is being published as an interim rule to become effective as provided above, with a 60-day public

comment period following this publication.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. The finding of inapplicabilty in accordance with HUD's Environmental procedures is available for inspection at the Office of the Rules Docket Clerk, at the above address. This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, 24 CFR Part 219 is amended as follows:

PART 219—FLEXIBLE SUBSIDY PROGRAM

1. Section 219.101 is revised to read as follows:

§ 219.101 Purpose.

The purposes of the Flexible Subsidy Program are:

(a) To provide assistance to restore or maintain the financial soundness, to assist in the improvement of management and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act or under the Housing and Urban Development Act of 1965, and

(b) On a temporary and interim basis to provide the funds necessary to pay the Department's share of the rent in a project whose owners are receiving assistance on behalf of eligible tenants under Section 101 of the Housing and Urban Development Act of 1965, Rent Supplements, and whose contracts need to be increased due to a HUD approved rent increase and where no Section 101 contract and budgetary funds are available for HUD to amend said contracts. This provision will expire pursuant to § 219.140 of the regulation.

2. Section 219.110 is amended by redesignating paragraphs (a) and (b) as (b) and (c), respectively, and by adding a new paragraph (a), to read as follows:

§ 219.110 Conditions for approval.

(a) Assistance may be made available under this Part to any project owner who has a Section 101 Rent Supplement contract which is in need of an increase due to a HUD-approved rent increase and where HUD cannot amend the Rent Supplement contract terms due to the lack of Rent Supplement contract and budgetary authority. For project owners in this category, the project either must receive a satisfactory management review and pass a physical inspection or the owner must submit an acceptable plan to remedy the deficiencies cited in such review or inspection before such assistance is granted. For troubled projects, paragraphs (b) and (c) of this section apply.

* * * * *

3. Section 219.115 is revised to read as follows:

§ 219.115 Local government assurances.

Except for those projects covered under paragraph (b) of § 219.101 which have substantially met this requirement prior to executing a Rent Supplement Contract, the Department, prior to making assistance available to a project, shall consult with the appropriate officials of the unit of local government in which such project is located and seek assurances that:

(a) The community in which the project is located is providing or will provide essential services to the project in keeping with the community's general level of these services;

(b) The real estate taxes on the project are or will be no greater than would be the case if the property were assessed in a manner consistent with normal property assessment procedures for the community; and

(c) Assistance to the project under this part would not be inconsistent with local plans and priorities.

4. Section 219.120 is revised to read as follows:

§ 219.120 Use and amount of assistance.

The assistance shall be provided in any amount which the Secretary determines is consistent with the project's management-improvement and operating plan, subject to the availability of funds appropriated by the Congress in annual appropriation acts. Assistance will not exceed the sum of:

(a) An amount determined by the Secretary to be necessary to correct project deficiencies existing at the beginning of the first year of assistance, which were caused by the deferral of regularly scheduled maintenance and repairs or the failure to make necessary and timely replacements of equipment and other components of the project, and for which payment has not previously been made. Any project deficiencies which require capital improvements are eligible for funding only if: (1) They are necessary to meet local building codes or to maintain the project in a decent, safe and sanitary condition, and (2) such expenditure is necessary and the most efficient method to make the improvement.

(b) An amount determined by the Secretary to be necessary to maintain the low- and moderate-income character of the project by reducing deficiencies, existing at the beginning of the first year of such assistance and for which payment has not previously been made in the reserve funds established by the project owner for the purpose of replacing capital items; and

(c) An amount not greater than the amount by which the estimated operating expenses for the year of such assistance, exceeds the estimated revenues to be recived by the project during such a year, or

(d) In the case of those projects covered in paragraph (b) of § 219.101, which has complied with § 219.110 paragraph (a), the amount of assistance provided for funding of Rent Supplement contracts due to rent increases shall be limited to the difference between 77% of the gross potential rent approved on the units covered by the Rent Supplement contract and the amount being paid under such contract.

5. Section 219.125 is amended by adding a new paragraph (c) to read as follows:

§ 219.125 Estimating project revenue and operating expenses.

* * * * *

(c) For those projects covered paragraph (b) of § 219.101 the amount of assistance provided under this part is limited to the difference between 77% of the gross potential rent approved on the units coverd by the Rent Supplement contract and the amount being paid under such contract.

6. A new § 219.140 is added, to read as follows:

§ 219.140 Time limitation on flexible subsidy payments in lieu of rent supplement payments.

No Flexible Subsidy contracts for payments in lieu of Rent Supplement contracts shall be executed after December 31, 1981.

(Sec. 201(g), Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1))

Issued at Washington, D.C., May 6, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 80–15961 Filed 5–22–80; 8:45 am]

BILLING CODE 4210–01–M

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24 CFR Parts 203, 204, 213, 220, 235 and 240

[Docket No. R–79–687]

Mutual Mortgage Insurance and Insured Home Improvement Loans

Correction

In FR Doc. 80–15585 appearing on page 33964 in the issue for Wednesday,

May 21, 1980; on page 33965, first column, the EFFECTIVE DATE should read "June 20, 1980".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 7

[T.D. 7692]

Homeowners Associations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 45 FR 26321 of the full text of the regulations which were the subject of Treasury Decision 7692 relating to homeowner associations under section 528 of the Internal Revenue Code of 1954.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1973. This correction is to be effective the same date.

FOR FURTHER INFORMATION CONTACT: Phoebe A. Mix of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3671, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1979, the **Federal Register** published a notice of proposed rulemaking (44 FR 1985) which proposed amendments to the Income Tax Regulations (26 CFR Parts 1 and 7) under section 528 of the Internal Revenue Code of 1954. On April 18, 1980, the **Federal Register** published Treasury Decision 7692 (FR Doc. 80-12000) at 45 FR 26319. The purpose of these amendments to the Income Tax Regulations made by the Treasury decision was to provide guidance to the public to determine whether a particular organization qualifies as a homeowners association.

Need for a Correction

As published, the full text of the regulations which were the subject of Treasury Decision 7692 contained a misprint in the figure for the percentage of lots which must be zoned for residential purposes in order to meet the requirement that substantially all of the lots or buildings of an association be used by individuals as residences.

Correction of Publication

Accordingly, the publication of the full text of the regulations which were the subject of FR Doc. 80-12000 (45 FR 26319) is amended by the following correction:

Section 1.528-4 (26 CFR Part 1), at 45 FR 26322, is corrected by revising the first sentence of paragraph (c) to read as follows:

§ 1.528-4 Substantially test.

* * * * *

(c) *Residential real estate management associations.* Substantially all of the lots or buildings of a residential real estate management association (including unimproved lots) will be considered as used by individuals as residences if at least 85% of the lots are zoned for residential purposes. * * *

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 80-15920 Filed 5-22-80; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

29 CFR Part 40

Farm Labor Contractor Registration Act; Housing for Agricultural Workers; Correction

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: Editorial review of FR Doc. 80-6797, appearing at pages 14185-14186 in the **Federal Register** of March 4, 1980, which amended 29 CFR Part 40, has disclosed that said document did not contain a citation of authority under which the affected section (29 CFR 40.20) was issued. This document corrects the omission.

EFFECTIVE DATE: April 3, 1980.

FUR FURTHER INFORMATION CONTACT: Paul E. Myerson, Counsel for Employment Standards, Division of General Legal Services, Office of the Solicitor of Labor, 200 Constitution Avenue, NW., Room N2464, Washington, D.C. 20210, telephone 202-523-8244.

Correction of Publication

In FR 80-6797, appearing at 45 FR 14185-14186 (March 4, 1980), a citation of authority is added to read as follows:

(Sec. 14, 78 Stat. 924 (7 U.S.C. 2050c), and sec. 17, 88 Stat. 1659 (7 U.S.C. 2053); Secretary's Order No. 16-75, 40 FR 55913; and Employment Standards' Order 2-75, 40 FR 56743.

Signed at Washington, D.C. this 18th day of May 1980.

Donald Elisburg,

Assistant Secretary for Employment Standards.

[FR Doc. 80-15896 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 725

Reimbursement to States for Purchase of Aircraft

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Final Rules.

SUMMARY: Policies and procedure providing for financial assistance to the States for administration and enforcement of the initial regulatory program were promulgated in December of 1977. The use of funds for the purchase of aircraft was excluded because there was insufficient time for budget planning that is necessary to cover such purchases. Section 725.12(h)(2) of the Office of Surface Mining permanent rules are amended to eliminate the exclusion from funding the purchase of aircraft during the initial regulatory program.

EFFECTIVE DATE: May 20, 1980.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, Roon 224, South Interior Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, telephone (202) 343-4221.

SUPPLEMENTARY INFORMATION: On December 13, 1977, the Secretary of the Interior promulgated the final rules for reimbursement to States for activities performed under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act). These regulations established the Office's policies and procedures for providing financial assistance for the administration and enforcement of the initial regulatory program, the development and implementation of permanent State regulatory programs and the administration of cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.

Part 725 sets forth requirements for grant reimbursement under the initial

regulatory program. Section 725.12, "Coverage of Grants," identifies items eligible for reimbursement during the initial regulatory program. It explicitly prohibits the use of Federal funds for the purchase of aircraft at § 725.12(h)(2). The preamble to this section (42 FR 62673) explains that the purchase of aircraft was thought to require more advance budget planning than would be possible during the interim regulatory phase. Funding for aircraft purchase under the permanent program administrative and enforcement grants is authorized under § 735.14 of the final grant regulations.

Since promulgation of these regulations, the Office's original June 3, 1980, date for termination of the initial regulatory program was extended seven months. The revised initial regulatory program deadline is January 3, 1981.

In view of the expanded initial regulatory program and corresponding budget planning experience gained by the States since the initial program's inception, OSM no longer believes the rationale for prohibiting the use of federal funds for the purchase of aircraft during the interim program to be valid. Accordingly, 30 CFR 725.12(h)(2) is amended to allow the purchase of aircraft under the initial regulatory program where cost recovery through use charges is prohibited, made impractical or more costly than purchase by existing State laws or procedures. States requesting financial assistance for such purchases will also be required to detail fully conditions making aircraft utilization particularly suited to program implementation and information concerning the projected or, if previously employed, established effectiveness of such use, as compared with any alternative approach.

This amendment is being promulgated today without having been initially proposed since notice and public comment are deemed unnecessary. Use of grant funds for aircraft was discussed in the public comment period on the initial regulations, and with States prior to publication of the proposed regulations. Comments received at both points consistently favored allowing aircraft purchase with grant funds. The only reason cited for not allowing aircraft purchase was that there was insufficient time for the advance budget planning that would be necessary to cover such purchases. This objection is no longer valid. Consequently, the Department has determined that the limitation should be removed.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14, 43 FR 58292, *et seq.* (December 12, 1978).

The Department of the Interior has determined that this action will not have a significant effect on the human environment and an environmental impact statement will therefore not be prepared.

Primary author of this document is David Halpern, State Programs Division, Office of Surface Mining.

Dated May 19, 1980.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

Text of Amendment

§ 725.12 [Amended]

30 CFR 725.12(h)(2) is amended by deleting the words "excluding aircraft."

(Sec. 501 and 502, Pub. L. 95–87)

[FR Doc. 80–15890 Filed 5–20–80; 3:44 pm]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 369

[DoD Directive 5105.2] [1]

Delegation of Authority to Deputy Secretary of Defense

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule delegates authority to the Deputy Secretary of Defense granting him full power and authority to act for the Secretary of Defense. It is being incorporated into this title in compliance with 5 U.S.C. 552(a)(1) and 1 CFR 305.76–2.

EFFECTIVE DATE: February 28, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Deputy Assistant Secretary of Defense (Administration), O&MP, Washington, D.C. 20301. Telephone: 202–697–1143.

Accordingly, 32 CFR is being amended by adding a new Part 369, reading as follows:

PART 369—DELEGATION OF AUTHORITY TO DEPUTY SECRETARY OF DEFENSE

Sec.

369.1 Purpose.

Authority: 10 U.S.C., Section 133.

§ 369.1 Purpose.

(a) In accordance with Title 10, U.S.C., Section 133(d), I hereby reaffirm my delegation of August 24, 1979, to Deputy Secretary of Defense W. Graham Claytor, Jr., granting him full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act under the law.

(b) This authority may not be redelegated.

Harold Brown,

Secretary of Defense.

May 19, 1980.

[FR Doc. 80–15869 Filed 5–22–80; 8:45 am]

BILLING CODE 3810–70–M

32 CFR 370

[DoD Directive 5136.8] [1]

DoD Health Council

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule establishes the Department of Defense Health Council, sets forth its responsibilities, and provides a forum for consultation, discussion and advice on DoD health plans and policies. The Council will advise the Assistant Secretary of Defense (Health Affairs) on defense health matters in accordance with Part 367 of this title.

EFFECTIVE DATE: March 18, 1980.

FOR FURTHER INFORMATION CONTACT: Lt. Col. W. D. Rasco, Office of the Assistant Secretary of Defense, (Health Affairs), The Pentagon, Washington, D.C. 20301. Telephone 202–697–9525.

Accordingly, 32 CFR is being amended by adding a new Part 370, reading as follows:

PART 370—DoD HEALTH COUNCIL

Sec.

370.1 Purpose.

370.2 Applicability.

370.3 Organization and Management.

370.4 Responsibilities.

Authority: 10 U.S.C., Section 133.

§ 370.1 Purpose.

This Part establishes the DoD Health Council. The Council complements the statutory responsibilities of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)), in accordance with

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

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32 CFR 367 by advising him on defense health matters; provides a forum for consultation, discussion, and advice on DoD health plans, policies, and related issues; and facilities coordination among the organizations represented by the Council members.

§ 370.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, and the Organization of the Joint Chiefs of Staff (OJCS). The term "Military Service" refers to the Army, Navy, Air Force, and Marine Corps.

§ 370.3 Organization and Management.

(a) The Defense Health Council is composed of the ASD(HA), who serves as the Chair, the Surgeons General from each of the Military Departments, and one representative from the OJCS and from the Uniformed Services University of the Health Sciences.

(b) The Council meets regularly at the call of the Chair.

(c) The Council is supported by an Executive Director who is selected by the ASD(HA). To assist the Executive Director, each member of the Council, other than the ASD(HA), designates an individual within its organization on a part-time basis to prepare issue items.

(d) The Executive Director of the Defense Health Council, subject to the direction of the Chair:

(1) Plans, organizes, and manages the administrative activities of the Council.

(2) Coordinates the development of reports and issues for consideration by the Council.

(3) Develops and coordinates plans and programs that are required to accomplish the Council's responsibilities.

(4) Performs other directed duties.

§ 370.4 Responsibilities.

(a) In carrying out the provisions of this Charter, the *Chair, Defense Health Council*, shall:

(1) Advise the ASD(HA) on policy changes required to improve wartime readiness and the delivery of health care.

(2) Advise the ASD(HA) on coordination with other Federal agencies to enhance health care delivery.

(3) Develop and maintain health objectives, with appropriate tasks and priorities approved by the ASD(HA), that:

(i) Increase the wartime medical readiness of the Military Departments.

(ii) Increase the productivity, efficiency, and economy of the Armed Forces health care system without unnecessary duplication of resources.

(iii) Enhance recruitment, retention, training, and use of health care professionals within the Armed Forces health care system to meet Military Service requirements.

(iv) Improve the effectiveness of the direct and indirect health care delivery system to meet the demands of the eligible beneficiary population.

(b) The *Assistant Secretary of Defense (Health Affairs)* shall report to the Secretary of Defense on any issue of importance that comes before the Council and that warrants the Secretary's consideration.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

May 19, 1980.

[FR Doc. 80-15868 Filed 5-22-80; 8:45 am]

BILLING CODE 3810-70

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32 CFR Part 371

[DoD Directive 5158.1] [1]

Organization of the Joint Chiefs of Staff and Relationships With the Office of the Secretary of Defense

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule sets forth policies, procedures and organizational relationships of the Organization of the Joint Chiefs of Staff, Office of the Secretary of Defense, and other offices established by the Secretary of Defense. It is being incorporated into this title in compliance with 5 U.S.C. 552(a)(1) and 1 CFR 305.76-2.

EFFECTIVE DATE: January 26, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Deputy Assistant Secretary of Defense (Administration), O&MP, Washington, D.C. 20301 Telephone: 202-697-1143.

Accordingly, 32 CFR is being amended by adding a new Part 371, reading as follows:

PART 371—ORGANIZATION OF THE JOINT CHIEFS OF STAFF AND RELATIONSHIPS WITH THE OFFICE OF THE SECRETARY OF DEFENSE

Sec.

371.1 Purpose.
371.2 Responsibilities and Procedures.

Authority: 10 U.S.C., Section 133.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

§ 371.1 Purpose.

(a) The Department of Defense Reorganization Act of 1958 and the President's Message to the Congress of April 3, 1958, set forth general policies, procedures, and organizational relationships required for the effective direction of the defense establishment.

(b) The President's Message singles out the accomplishment of the following objective as one of the paramount duties of the Secretary of Defense, acting with the advice and assistance of the Joint Chiefs of Staff and under the supervision of the Commander in Chief: "Strategic and tactical planning must be completely unified, combat forces organized into unified commands, each equipped with the most efficient weapons systems that science can develop, singly led and prepared to fight as one, regardless of Service."

(c) The purpose of this Part is to implement the Department of Defense Reorganization Act of 1958 and the President's Message of April 3, 1958, with respect to the Organization of the Joint Chiefs of Staff and its relationship with the major offices in the Office of the Secretary of Defense, such as the Under Secretaries of Defense, the Assistant Secretaries of Defense, the General Counsel of the Department of Defense, the Assistants to the Secretary of Defense, and the heads of other offices established by the Secretary of Defense.

(d) The functions of the Department of Defense and its major components have been set forth in DoD Directive 5100.1, "Functions of the Department of Defense and its Major Components," January 26, 1980.

§ 371.2 Responsibilities and Procedures.

(a) The duties of the Chiefs of the Military Services as members of the Joint Chiefs of Staff shall take precedence over all of their other duties. To ensure that the Chief of the Military Services have adequate time to devote to their duties as members of the Joint Chiefs of Staff, they shall delegate appropriate duties to their Vice Chiefs.

(b) The Joint Chiefs of Staff shall, in discharging their responsibilities, avail themselves of the most competent and considered thinking that represents every pertinent point of view, such as scientific, industrial, economic, as well as military.

(c) To ensure that planning and operations are of the highest order:

(1) All elements of the Organization of the Joint Chiefs of Staff shall cooperate fully and effectively with appropriate offices of the Office of Secretary of Defense. In all stages of important staff studies, the Organization of the Joint

Chiefs of Staff shall avail itself of the views and special skills in the Office of the Secretary of Defense. As a normal procedure, specialized data necessary for the preparation of such studies shall be obtained from or through the appropriate offices of the Office of the Secretary of Defense.

(2) The Directors of the various Directorates of the Joint Staff shall maintain active liaison with appropriate offices of the Office of the Secretary of Defense. This shall include, but not be limited to, an exchange of information, interchange of technical advice, and guidance for mutual benefit. The heads of offices in the Office of the Secretary of Defense shall maintain similar liaison and make representatives available to meet formally or informally with appropriate members of the Organization of the Joint Chiefs of Staff.

(d) Directives and orders to the Joint Chiefs of Staff shall be issued by the Secretary or the Deputy Secretary of Defense. Requests to the Joint Chiefs of Staff or to the Chairman of the Joint Chiefs of Staff involving action by the Joint Chiefs of Staff may be issued by responsible officials of the Office of the Secretary of Defense, in accordance with authority specifically delegated by the Secretary of Defense.

(e) Development of strategic and logistic plans shall be based on the broadest concepts of overall national interests. Personnel of the Organization of the Joint Chiefs of Staff shall be selected for their competency and their ability to support such interests.

(f) The Chairman of the Joint Chiefs of Staff shall have the authority and responsibility to:

(1) Serve as a member of and preside over the Joint Chiefs of Staff.

(2) Provide the agenda for meetings of the Joint Chiefs of Staff and assist them in prosecuting their business as promptly as is practicable.

(3) Furnish the Secretary of Defense with periodic progress reports on important items of current interest that are being considered by the Joint Chiefs of Staff.

(4) Keep the Secretary of Defense informed on issues upon which agreement among the Joint Chiefs of Staff has not been reached, and forward to the Secretary of Defense the recommendations, advice, and views of the Joint Chiefs of Staff, including any divergencies.

(5) Arrange for the provision of military advice to all offices of the Office of the Secretary of Defense.

(6) Make arrangements to relieve the Joint Chiefs of Staff of matters of lesser importance.

(7) Organize the Joint Staff and the subordinate structure of the Organization of the Joint Chiefs of Staff to ensure that they are designed to accomplish efficiently the tasks to be assigned.

(8) Manage the Joint Staff and its Director on behalf of the Joint Chiefs of Staff by conducting, guiding, administering the work of the elements affected, and ensuring that the work is performed in a manner that permits the Secretary of Defense and the Joint Chiefs of Staff to discharge their total responsibilities. The Joint Staff shall perform such duties as the Joint Chiefs of Staff or the Chairman of the Joint Chiefs of Staff prescribes.

(9) Keep the Joint Chiefs of Staff informed, as appropriate, about any matter that is referred by the Chairman to the Secretary of Defense with a recommendation that the matter be assigned to a Military Department for consideration or action.

(10) Appoint consultants to the Joint Chiefs of Staff from outside the Department of Defense, subject to the approval of the Secretary of Defense and with the advice of the Joint Chiefs of Staff.

(g) The selection of the Director, Joint Staff, and of the members of the Organization of the Joint Chiefs of Staff shall be as follows:

(1) The Director, Joint Staff, shall be selected and his tenure fixed by the Chairman of the Joint Chiefs of Staff, in consultation with the Joint Chiefs of Staff and with the approval of the Secretary of Defense. The normal tenure of the Director shall be 2 years. Any extension of this tenure may not exceed 1 year, except in time of war.

(2) The members of the Organization of the Joint Chiefs of Staff shall be selected by the Joint Chiefs of Staff with the approval of the Chairman of the Joint Chiefs of Staff.

(h) The duties and manner of operation of the Operations Deputies shall be prescribed by the Joint Chiefs of Staff.

(i) In order to carry out the objectives of section 2(c) of this Part, the Director, Joint Staff, and appropriate heads of offices in the Office of the Secretary of Defense have the specific duty and authority of ensuring that there is full cooperation between their respective agencies.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

May 19, 1980.

[FR Doc. 80-15887 Filed 5-22-80; 8:45 am]

BILLING CODE 3810-70-M

32 CFR Part 372

[DoD Directive 5122.10] [1]

American Forces Information Service

AGENCY: Office of the Secretary of Defense

ACTION: Final rule.

SUMMARY: This rule defines the Department of Defense mission, functions, authorities, and relationships of the American Forces Information Service (AFIS); and establishes the American Forces Information Council. The AFIS' mission is to provide media materials for DoD-wide use.

EFFECTIVE DATE: March 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Deputy Assistant Secretary of Defense (Administration), O&MP, Washington D.C. 20301. Telephone: 202-697-1143.

Accordingly, 32 CFR is being amended by adding a new PART 372, reading as follows:

PART 372—AMERICAN FORCES INFORMATION SERVICE

Sec.

372.1 Purpose.
372.2 Applicability.
372.3 Mission.
372.4 Organization and Management.
372.5 Responsibilities and Functions.
372.6 Relationships.
372.7 Authority.
372.8 Administration.
Enclosure 1—Definitions.
Enclosure 2—Delegations of Authority.

Authority: 10 U.S.C. 133.

§ 372.1 Purpose.

Under the authority vested in the Secretary of Defense by Title 10, U.S.C., this Part defines the mission, functions, authorities, and relationships of the American Forces Information Service (AFIS) and establishes the American Forces Information Council (AFIC).

§ 372.2 Applicability.

This Part applies to the Office of the Secretary of Defense and its field activities, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

§ 372.3 Mission.

(a) The AFIS shall:

(1) Provide joint interest print, radio, and television materials for use in the internal information programs of the

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attention: Code 301

Military Departments and other DoD Components.

(2) Advise and assist the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) in the management of DoD internal information programs.

(b) The AFIC shall serve as a forum for the exchange of information and advice on DoD internal information matters.

§ 372.4 Organization and Management.

(a) The AFIS is established as a field activity of the Office of the Secretary of Defense under the direction, authority, and control of the ASD(PA). It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources assigned by the Secretary of Defense.

(b) The AFIC is established as a policy committee reporting to the ASD(PA). It shall consist of the following:

(1) A chair, who shall be designated by the ASD(PA).

(2) A representative from each Military Department and the AFIS.

(3) An Executive Secretary, who shall be designated by the ASD(PA).

§ 372.5 Responsibilities and Functions.

(a) The *Secretaries of the Military Departments* shall:

(1) Conduct internal information activities pertaining to their Department's programs, operations, and activities.

(2) Operate information and entertainment broadcast outlets (American Forces Radio and Television (AFRT)) in designated geographic areas.

(3) Centrally manage and control all AFRT activities of their Departments.

(b) The *Assistant Secretary of Defense (Public Affairs)* shall:

(1) Develop policies and provide guidance on the Administration of DoD internal information programs.

(2) Designate geographic areas of responsibility for the operation of Military Department AFRT broadcast outlets, and exercise program and resource management control of AFRT, through the AFIS.

(3) Provide policy and operational direction to the Director, AFIS.

(c) The *Commanders of the Unified Commands* shall:

(1) Develop plans for and assume control of AFRT facilities within their geographic areas of responsibility during periods of military contingency, as required, to ensure a coordinated internal information effort.

(2) Notify the Secretaries of the Military Departments and the ASD(PA) expeditiously of military contingency occurrences, and return control to the Military Departments immediately upon termination of the contingency situation.

(3) Provide advice with respect to host country sensitivities concerning the nature and content of radio and television programs.

(d) The *Director, American Forces Information Service*, shall:

(1) Organize, direct, and manage the AFIS and all assigned resources.

(2) For print media internal information programs:

(i) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of periodicals, armed forces newspapers, and civilian enterprise publications, including the provisions of Parts 202 and 248 of this title.

(ii) Serve as DoD point of contact in the United States for Unified Command newspaper matters.

(iii) Serve as DoD point of contact with the Congressional Joint Committee on Printing for matters pertaining to DoD periodicals, armed forces newspapers, and civilian enterprise publications.

(iv) Develop and publish appropriate internal information material of a DoD-wide, joint-interest nature.

(3) For AFRT radio and television internal information programs:

(i) Develop and oversee the implementation of policies and procedures pertaining to the management and operation of broadcasting and mini-TV activities, including the provisions of DoD Instruction 5120.20[1], "American Forces Radio and Television (AFRT)," April 26, 1971.

(ii) Exercise fiscal and manpower resource control through the Planning, Programming, and Budgeting System. Provide guidance on, review, and approve or revise proposed resource programs, formulate budget estimates, recommend resource allocations, and monitor the implementation of approved programs.

(iii) Administer centralized management information and resource management systems, in accordance with DoD Directives 5000.19,[1] "Policies for the Management and Control of Information Requirements," March 12, 1976, and 5000.11,[1] Data Elements and Data Codes Standardization Program," December 7, 1964.

(iv) Establish guidelines for and authorize the establishment of new stations, the disestablishment of existing stations, and the configuration of broadcast networks.

(v) Develop and maintain a program for the standardization of broadcast equipment. Establish broadcast equipment technical specifications and performance standards, and certify equipment for use.

(vi) Establish manning standards for stations and overhead staffs, and qualifications standards for broadcast and technical support personnel. Review and concur or nonconcur in the selection of network commanders.

(vii) Negotiate for, acquire, and provide public service and commercial program materials, and a free flow of general and military news, sports, and current events programs.

(4) Develop and provide DoD information training requirements and guidance, and provide liaison with the Defense Information School, established under DoD Directive 5160.48,[1] Department of Defense Information Training," February 21, 1964.

(5) Perform other related internal information functions that the ASD(PA) may assign.

(e) The *Members of the American Forces Information Council* shall meet periodically to:

(1) Consider questions of policy and advise the ASD(PA) with respect to internal information programs.

(2) Exchange information among the membership.

§ 372.6 Relationships.

(a) In the performance of assigned functions, the Director, AFIS, shall:

(1) Coordinate actions with other DoD Components having collateral or related functions in the field of assigned responsibility.

(2) Maintain appropriate liaison with DoD Components and other governmental and nongovernmental agencies for the exchange of information and advice on programs in the field of assigned responsibility.

(3) Make use of established facilities and services in the Department of Defense and other governmental agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the Director, AFIS, on all matters related to the mission, responsibilities, and functions of AFIS.

§ 372.7 Authority.

The Director, AFIS, is authorized to:

(a) Obtain from DoD Components consistent with the policies and criteria of DoD Directive 5000.19, information,

[1] See footnote 1, page 34882.

advice, and assistance necessary to carry out AFIS programs and activities.

(b) Communicate directly with appropriate personnel in the Military Departments and other DoD Components on matters related to AFIS programs and activities.

(c) Communicate with other government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out the functions assigned under this Directive.

(d) Exercise the administrative authorities contained in enclosure 2 of this Part.

§ 372.8 Administration.

(a) The Director, AFIS, shall be selected by the ASD(PA).

(b) The AFIS shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense considers necessary.

(c) The Military Departments shall assign military personnel to AFIS in accordance with approved authorizations and established procedures for assignment to joint duty.

(d) Administrative support for AFIS shall be provided by DoD Components through interservice support agreements in accordance with DoD Directive 4000.19,[1] "Basic Policies and Principles for Interservice, Interdepartmental and Interagency Support," March 27, 1972.

Enclosure 1.—Definitions

Acquisition. The process through which broadcast equipment, programs, materials, products, and services are obtained from public and commercial sources.

Broadcast Activities. Organizations or functions relating to the management of radio and television resources or the provision of services and products, to include equipment, facilities, personnel, supplies, accessions, maintenance, and support.

Broadcast Equipment. Items of a durable nature used for recording, producing, mixing, reproducing, broadcasting, and all items commonly used in the broadcasting and television industry for the recording, processing, distribution, reproduction, and transmission of radio and TV signals.

Broadcast Facilities. Physical plants in which broadcast activities are housed.

Broadcast Network. Multiple radio and/or television stations linked by transmission lines, microwave, coaxial cable, or satellite.

Broadcast Outlet. Any radio, television, relay station, or closed-circuit installation, authorized by Director, AFIS, in accordance with policy, to broadcast radio or television programs.

Broadcast Programs. Radio or television program materials authorized for transmission by authorized broadcast outlets.

Internal Information. All information that is intended to keep DoD military and civilian personnel, and their dependents, fully informed on matters concerning their morale and well being. This includes information disseminated through publications, periodicals, radio and television, motion picture, videotape, and related media.

Mini-TV. A self-contained videotape playback system used in remote or isolated areas not accessible to a radiated AFRT television signal.

Print Media. Printed publications issued in support of the internal information program of the Department of Defense. This includes, but is not limited to, newspapers, periodicals, newsletters, news summaries, and news bulletins.

Enclosure 2.—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, directives, and instructions, the Director, AFIS, or, in the absence of the Director, the person acting for the Director is hereby delegated authority, as required in the administration and operation of AFIS, to:

1. Perform the following functions in accordance with the provisions of 5 U.S.C. 7532 (1976), Executive Order 10450, as amended, 3 CFR 936 (1949–1953 Compilation), reprinted as 5 U.S.C. 7311 (1976).

a. Designate any position in AFIS as a sensitive position;

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in AFIS for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Security Check, has not been completed; and

c. Authorize the suspension, but not the termination of services, of an employee in the interest of national security in positions within AFIS.

2. Authorize and approve overtime work for AFIS civilian employees, in accordance with the Federal Personnel Manual, Supplement 990–1, § 550.111 (5 CFR 550.111 (1978)).

3. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to 44 U.S.C.A. 3102 (1969 and Supplement 1978).

4. Authorize the publication of advertisements, notices, or proposals in public periodicals, as required for the effective administration of AFIS, pursuant to 44 U.S.C. 3702 (1970).

5. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1 [1], "Department of Defense Directives System," November 18, 1977.

Dated: May 19, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-15866 Filed 5-22-80; 8:45 am]

BILLING CODE 3810-70-M

[1] See footnote, page 34882.

FEDERAL EMERGENCY MANAGEMENT AGENCY

32A CFR Part 134

[Docket No. FEMA-PP-32A-134]

Preservation of the Mobilization Base Through the Placement of Procurement and Facilities in Labor Surplus Areas

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Defense Manpower Policy 4A (DMP–4A) (Part 134) is revised to recognize Executive Order 12073 (43 FR 36873, August 18, 1978), and to preserve the mobilization aspects of the labor surplus area program. Federal departments and agencies, in carrying out this policy, shall be guided by Executive Order 12073, as well as the policy direction of the Office of Federal Procurement Policy and implementing regulations. Because of the revision to DMP–4A, the Surplus Manpower Committee is abolished.

DATE: This regulation is effective June 23, 1980.

ADDRESSES: Comments should be addressed to: Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Mr. Henry M. Hyatt, Federal Emergency Management Agency, Washington, D.C. 20472, telephone number 202/566–1324.

SUPPLEMENTARY INFORMATION: On April 2, 1979, the Federal Preparedness Agency, the predecessor to the Federal Emergency Management Agency, issued a proposed rule (44 FR 19207) which revised DMP–4A and requested comments thereon by May 2, 1979. Two comments were received. One noted that no regulatory analysis was being performed and suggested that one be performed because a purpose of the policy was to cause an economic impact by "assisting in the maintenance of economic balance and employment stability." However, this aspect of the regulation merely repeats the existing provision and hence this rulemaking has no impact. Further, contract regulations like this are exempt from Executive Order 12044. (See 6(b)(4).) Thus, FEMA

has not performed the regulatory analysis.

The other comment noted that this new policy is substantially less comprehensive than the former Defense Manpower Policy and did not cross-reference other documents. It was suggested that the final rule reincorporate the former material. However, the revision was designed to separate mobilization policy from procurement policy. The latter is quite adequately covered by Executive Order 12073 and implementing regulations of the General Services Administration and the Office of Federal Procurement Policy. The FEMA role under the revised regulation is one of mobilization oversight; while the day-to-day activities are handled by GSA and OFPP.

The functions of the Secretary of Commerce and the Administrator of Small Business which appeared in the prior regulation and which were deleted in the proposed rule have been reinstated in the rule with a role for OFPP.

The former regulation in this part is also known as Defense Manpower Policy 4A (DMP–4A). The revised regulation will also be known as DMP–4B. Accordingly, 32A CFR Part 134 (DMP–4A) is amended to be a revised Part 134 (DMP–4B) as follows:

PART 134—PRESERVATION OF THE MOBILIZATION BASE THROUGH THE PLACEMENT OF PROCUREMENT AND FACILITIES IN LABOR SURPLUS AREAS

Sec.

134.1 Purpose.
134.2 Policy.
134.3 Scope and Applicability.
134.4 Special Consideration
134.5 Production Facilities.

Authority: Reorganization Plan No. 3 of 1978, Executive Order 10480, as amended, Executive Order 12148.

§ 134.1 Purpose.

Success of the national defense program depends upon efficient use of all of our resources, including the labor force and production facilities, which are preserved through utilizing the skills of both management and labor. A primary aim of Federal manpower policy is to encourage full utilization of existing production facilities and workers in preference to creating new plants or moving workers, thus assisting in the maintenance of economic balance and employment stability. When large numbers of new workers move to labor surplus areas, heavy burdens are placed on community facilities, such as schools, hospitals, housing, transportation, and utilities. On the other hand, when unemployment develops in certain areas, unemployment costs increase the total cost to the Government, and plants, tools, and workers' skills remain idle and unable to contribute to our national defense program. Consequently, it is the purpose of Defense Manpower Policy No. 4B to direct attention to the potential of labor surplus areas when awarding appropriate procurement contracts and when locating new plants or facilities.

§ 134.2 Policy.

(a) It is the policy of the Federal Government to award appropriate contracts to eligible labor surplus area concerns, to place production facilities in labor surplus areas, and to make the best use of our natural, industrial and labor resources in order to achieve the following objectives:

(1) To preserve management and employee skills necessary to the fulfillment of Government contracts and purchases;

(2) To maintain productive facilities;

(3) To improve utilization of the Nation's total economic potential by making use of the labor force resources of each area; and

(4) To help ensure timely delivery of required goods and services and to promote readiness for mobilization by locating procurement where the needed labor force and facilities are fully available.

(b) This policy is consonant with the intent of Public Law 95–89 and Public Law 95–507 as implemented by EO 12073. In carrying out this policy, Federal departments and agencies shall be guided by Executive Order 12073, the policy direction of the Office of Federal Procurement Policy and implementing regulations.

§ 134.3 Scope and applicability.

The provisions of this policy apply to all Federal departments and agencies, except as otherwise prohibited by law. In addition to these normal duties;

(a) The Secretary of Commerce shall:

(1) In cooperation with State economic development agencies, the Secretary of Defense, the Administrator of General Services, and the Administrator of Small Business Administration, assist concerns which have agreed to perform contracts in labor surplus areas in obtaining Government procurement business by providing such concerns with timely information on proposed Government procurements.

(2) Urge concerns planning new production facilities to consider the advantages of locating in labor surplus areas.

(3) Provide technical advice and counsel to groups and organizations in labor surplus areas on planning industrial parks, industrial development organizations, expanding tourist business, and available Federal aids.

(b) The Administrator of the Small Business Administration shall make available to small business concerns in labor surplus areas all of its services, endeavor to ensure opportunity for maximum participation by such concerns in Government procurement, and give consideration to the needs of these concerns in the making of joint small business set-asides with Government procurement agencies.

(c) OFPP shall coordinate the maintenance by Federal agencies of current information on the manufacturing capabilities of labor surplus area concerns with respect to Government procurement and disseminate such information to Federal departments and agencies.

§ 134.4 Special consideration

When an entire industry that sells a significant proportion of its production to the Government is generally depressed or has a significant proportion of its production, manufacturing and service facilities located in a labor surplus area, the Director, Federal Emergency Management Agency, or successor in function, after notice to and hearing of interested parties, will give consideration to appropriate measures applicable to the entire industry.

§ 134.5 Production facilities.

All Federal departments and agencies shall give consideration to labor surplus areas in the selection of sites for Government-financed production facilities, including expansion, to the extent that such selection is consistent with existing law and essential economic and strategic factors.

Dated: May 16, 1980.

John W. Macy, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 80–15905 Filed 5–22–80; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 67

Historic Preservation Certifications Pursuant to the Tax Reform Act of 1976

AGENCY: National Park Service.

ACTION: Redesignation of Part 67, Title 36, Chapter I to Part 1208, Title 36, Chapter XII.

SUMMARY: Since the Heritage Conservation and Recreation Service was established on January 25, 1978, regulations currently published in Title 36, Chapter I which pertain to the programs of the Service must be transferred to Title 36, Chapter XII. So that the Service's regulations are consolidated under one Title and Chapter, this document redesignates 36 CFR Chapter I, Part 67 to 36 CFR Chapter XII, Part 1208.

EFFECTIVE DATE: May 23, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Carol D. Shull, Acting Keeper of the National Register, Heritage Conservation and Recreation Service, United States Department of the Interior, Washington, D.C. 20243 (202) 343–6401.

SUPPLEMENTARY INFORMATION:

PART 67—[REDESIGNATED AS PART 1208, CHAPTER XII]

This document transfers and redesignates 36 CFR, Chapter I, Part 67 to 36 CFR, Chapter XII, Part 1208. Therefore, Part 67 is deleted from Chapter I, Title 36. Elsewhere in this **Federal Register,** proposed regulations are published to amend 36 CFR, Chapter XII, Part 1208.

Dated: May 16, 1980.

Robert L. Herbst,

Assistant Secretary of the Interior.

[FR Doc. 80–15784 Filed 5–22–80; 8:45 am]

BILLING CODE 4310–03–M

Heritage Conservation and Recreation Service

36 CFR Part 1201

Criteria for Comprehensive Statewide Historic Surveys and Plans

Correction

In FR Doc. 80–14401, appearing at page 30623 in the issue of Friday, May 9, 1980, the signature on page 30624 should have read, "Bob Herbst".

BILLING CODE 1505–01–M

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36 CFR Part 1208

Historic Preservation Certifications Pursuant to the Tax Reform Act of 1976

AGENCY: Heritage Conservation and Recreation Service.

ACTION: Redesignation of regulations.

SUMMARY: Since the Heritage Conservation and Recreation Service was established on January 25, 1978, regulations currently published in Title 36, Chapter I, which pertain to the programs of the Service must be transferred to Title 36, Chapter XII. So that the Service's regulations are consolidated under one Title and Chapter, this document adopts the transfer of 36 CFR, Chapter I, Part 67.

EFFECTIVE DATE: May 23, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Carol D. Shull, Acting Keeper of the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243 (202) 343–6401.

SUPPLEMENTARY INFORMATION: This document adopts the transfer of 36 CFR, Chapter I, Part 67 to 36 CFR, Chapter XII, Part 1208. Elsewhere in this **Federal Register,** proposed regulations are published to amend 36 CFR, Chapter XII, Part 1208.

Dated: May 16, 1980.

Robert L. Herbst,

Assistant Secretary of the Interior.

[FR Doc. 80–15786 Filed 5–22–80; 8:45 am]

BILLING CODE 4310–03–M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans' Benefits; Effective Date of Awards

AGENCY: Veterans Administration.

ACTION: Final Regulations.

SUMMARY: The Veterans Administration has amended its regulations governing the effective date of an award of additional compensation, dependency and indemnity compensation, or pension by reason of need for aid and attendance or housebound status. The need for this action was brought to our attention by several of our field stations who pointed out that the regulations did not provide specific rules for the effective dates of these benefits. This action corrects that situation.

EFFECTIVE DATE: May 13, 1980.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr. (202–389–3005).

SUPPLEMENTARY INFORMATION: On pages 9297–98 of the **Federal Register** of February 12, 1980, the Veterans Administration published proposed amendments to §§ 3.401, 3.402 and 3.404 of Title 38, Code of Federal Regulations.

We gave the public until March 13, 1980, to submit comments, suggestions, or objections to the proposed amendments. We received one letter of comment.

The commentator made two suggestions. Neither suggestion, however, was directly related to our proposed amendments. Consequently, the proposed amendments of §§ 3.401, 3.402 and 3.404 are adopted as proposed.

Approved: May 13, 1980.

By direction of the Administrator:

Rufus H. Wilson,

Deputy Administrator.

§ 3.400 [Amended]

1. Section 3.400 is amended by deleting the words "widow (widower)" and inserting the words "surviving spouse" in the headnote of paragraph (v).

2. Section 3.401 is amended as follows:

(a) By deleting "§ 3.3(b)" and inserting "§ 3.3(a)" in paragraph (f).

(b) By revising paragraph (a) as follows:

§ 3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

(a) *Aid and attendance and housebound benefits.* (1) Except as provided in § 3.400(o)(2), the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of pension or compensation based on an original or reopened claim is effective for a period prior to the date of receipt of the claim, any additional pension or compensation payable by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established. (38 U.S.C. 210(c); 3010(b)(1), (3))

(2) Date of departure from hospital, institution, or domiciliary. (38 U.S.C. 210(c))

(3) Spouse, additional compensation for aid and attendance: Date of receipt of claim or date entitlement arose, whichever is later. However, when an award of disability compensation based on an original or reopened claim is effective for a period prior to date of receipt of the claim additional disability compensation payable to a veteran by reason of the veteran's spouse's need for aid and attendance shall also be awarded for any part of the award's retroactive period for which the spouse's entitlement to aid and attendance is established. (38 U.S.C. 210(c); 3010(b)(1), (2))

* * * * *

3. Section 3.402 is revised to read as follows:

§ 3.402 Surviving spouse.

Awards of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be effective as follows:

(a) *Additional allowance of dependency and indemnity compensation for children § 3.5(e).* Commencing date of surviving spouse's award. See § 3.400(c).

(b) *Legal surviving spouse entitled.* See § 3.657.

(c) *Aid and attendance and housebound benefits.* (1) Date of receipt of claim or date entitlement arose whichever is later. However, when an award of DIC (dependency and indemnity compensation) or pension based on an original or reopened claim is effective for a period prior to date of receipt of the claim, any additional DIC or pension payable to the surviving spouse by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established. (38 U.S.C. 210(c); 3010(d))

(2) Date of departure from hospital, institutional or domiciliary care at Veterans Administration expense. This is applicable only to aid and attendance benefits. Housebound benefits may be awarded during hospitalization at Veterans Administration expense. (38 U.S.C. 210(c))

§ 3.403 [Amended]

4. Section 3.403 is amended by deleting the words "widow (widower)" and inserting the words "surviving spouse" in the introductory portion preceding paragraph (a).

5. Section 3.404 is revised to read as follows:

§ 3.404 Parents.

Awards of additional amounts of compensation and dependency and indemnity compensation based on a parent's need for aid and attendance will be effective the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of dependency and indemnity compensation based on an original or reopened claim is effective for a period prior to date of receipt of claim, any additional dependency and indemnity compensation payable by reason of need for aid and attendance may also be awarded for any part of the award's retroactive period for which entitlement to aid and attendance is established. When the parent is provided hospital, institutional or domiciliary care at Veterans Administration expense, the effective date will be the date of departure therefrom. (38 U.S.C. 210(c); 3010(d))

[FR Doc. 80-15904 Filed 5-22-80; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

[Circular No. 2464]

Amendment and Correction of Regulations Relating to Management of Oil and Natural Gas Pipelines and Related Facilities on Federal Lands and Reimbursement of Costs

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Rulemaking.

SUMMARY: This final rulemaking makes a procedural change in the regulations on Management of Oil and Natural Gas Pipelines and Facilities on Federal Lands and Reimbursement of Costs to allow an application for a right-of-way grant to be filed in the District Office in addition to the State Office of the Bureau of Land Management. This amendment should simplify filing procedure for applicants. This rulemaking also contains two corrections to the regulations.

EFFECTIVE DATE: June 23, 1980.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (330), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Orval L. Hadley (202) 343-5537.

SUPPLEMENTARY INFORMATION: After the publication of the final rulemaking on Management of Oil and Natural Gas Pipelines and Related Facilities on Federal Lands and Reimbursement of Costs, it was determined that the rulemaking should be amended to allow applications for right-of-way grants for oil and natural gas pipelines to be filed in either the appropriate District or Area Office or the State Office of the Bureau of Land Management. This amendment was necessary because of a recent change in the designated official who may issue a grant. There was concern that there would be delays in the issuance of right-of-way grants for some oil and gas pipelines because of Bureau of Land Management requirements for issuance of right-of-way grants. It was thought this would delay the production of oil and natural gas. In an effort to prevent procedural delays, the Bureau of Land Management issued instructions to its field organization to ensure that the issuance of right-of-way grants for oil and gas pipelines would move smoothly, efficiently and quickly.

This amendment goes hand-in-hand with an amended Bureau of Land Management Order No. 701, Redelegation of Authority, which allows the State Directors to redelegate their authority to grant rights-of-way to District Managers and Area Managers.

In addition, two corrections were needed in the final rulemaking as it appeared in the **Federal Register** on October 9, 1979. This document includes those corrections to section 2882.2-3(a) and section 2882.2-4(e).

This rulemaking is being published as a final rulemaking, without being considered in proposed form, because it is a procedural change that lessens the impact of the regulation on the public. The existing regulations authorize the filing of applications for a right-of-way grant at State Offices of the Bureau of Land Management. This amendment will increase the locations where such applications can be filed by authorizing their filing at District and Area Offices of the Bureau of Land Management. It does not increase the burden on the public in any way.

The principal authors of this final rulemaking are Orval L. Hadley, Division of Rights-of-Way and Project Review and Robert C. Bruce, Office of Legislation and Regulatory Management, both of the Bureau of Land Management.

It is hereby determined that publication of this final ruelmaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to section 102(2)(C) of the National and Environmental Protection Act of 1969 (42 U.S.C. 4332(2)(C)).

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Part 2880, Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations, is amended and corrected as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

May 20, 1980.

1. Section 2882.2-2(a) is amended by deleting "any State Office" and inserting in lieu thereof "the nearest Bureau of Land Management Office".

2. Section 2882.2–2(b) is amended by striking the period at the end of the first sentence and adding the following:

"or at the nearest Bureau of Land Management Office that has jurisdiction over a portion of the Federal lands involved."

3. Section 2882.2–3(a) is corrected by deleting "§ 2882.22–1" and inserting in lieu thereof "§ 2882.2–1".

4. Section 2882.2–4(e) is corrected by deleting "§ 2882.3–3" and inserting in lieu thereof "§ 2882.2–4(f)".

[FR Doc. 80–75915 Filed 5–22–80 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 79–53; RM–3250; RM–3368]

FM Broadcast Stations in Stuttgart and West Helena, Ark.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 288A to Stuttgart, Arkansas, and Channel 285A to West Helena, Arkansas, as first FM assignments to those communities. The assignments would provide for a first local aural broadcast service to Stuttgart and West Helena.

EFFECTIVE DATE: June 26, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations (Stuttgart and West Helena, Arkansas), BC Docket No. 79–53, RM–3250, RM–3368.

Report and Order—Proceeding Terminated

Adopted: May 9, 1980.

Released: May 15, 1980.

1. By *Notice of Proposed Rule Making*, March 30, 1979, 44 FR 18997, the Commission proposed to amend § 73.202(b) of its rules, the FM Table of Assignments, by assigning Channel 288A to West Helena, Arkansas. The *Notice* was issued in response to a petition from West Helena Radio, Inc. ("WHR"). A counterproposal was filed by Dr. John D. Miller ("Miller"), seeking assignment of Channel 288A to Stuttgart, Arkansas, approximately 83 kilometers (52 miles) from West Helena.[1] The parties have each filed reply comments, "further comments," and "supplemental comments," opposing each other's proposals. Coastal Communications, Ltd. ("Coastal"), licensee of Station KMJX(FM)[2] (Channel 286), Conway, Arkansas, filed comments relating to its proposed site change, which could be affected by the assignment of Channel 288A to Stuttgart.

2. West Helena, Arkansas (pop. 11,007),[3] located in Phillips County (pop. 40,046), is located approximately 72 kilometers (45 miles) southwest of Memphis, Tennessee. Daytime-only AM Station KCRI[4] is currently licensed to West Helena. However, the licensee, Twin Cities Broadcasting Company ("Twin Cities"), has applied for a waiver of § 73.30(a) of the Commission's rules, so that it might relocate its main studio in Helena, 11 kilometers (7 miles) from West Helena. West Helena receives some service from Helena Stations KFFA(AM) (fulltime) and KCRI(FM) (Channel 276A), licensed to Twin Cities. Channel 288A could be assigned to West Helena in compliance with the minimum distance separation requirements, provided that the transmitter site is located approximately 5 kilometers (3 miles) west of the community. WHR has affirmed its intent to apply for the channel, if assigned to West Helena.

3. Stuttgart (pop. 10,477), is located in Arkansas County (pop. 23,347), 63 kilometers (40 miles) east of Little Rock, Arkansas. Miller states that Stuttgart is primarily agricultural, with major crops of rice, cotton, soy beans, corn and small grains. Stuttgart has no present local FM service, but is currently served by fulltime AM Station KWAK. Channel 288A could be assigned to Stuttgart in compliance with the minimum distance separation requirements, provided that the transmitter site is located at least 5 kilometers (3 miles) east of the community.[5] Miller has affirmed his intent to apply for Channel 288A, if assigned to Stuttgart.

4. WHR and Miller, through various rounds of comments and replies, have thoroughly aired the issues relating to the mutually exclusive requests for the assignment of Channel 288A to their respective communities. WHR, opposing the assignment to Stuttgart in reply comments, suggests an alternative, Channel 269A, for assignment to Stuttgart. Miller, in response to WHR's reply comments, states that Channel 269A could not be used at Stuttgart because the requisite site limitation, 10 kilometers (6 miles) northwest of the community, would place the transmitter in low-lying, swampy terrain, within the approach path of the Stuttgart airport and where sufficient electric power may not be available. WHR disputes these claims in "further comments." In "supplemental comments," however, Miller states affirmatively that he will not apply for Channel 269A, if it is assigned to Stuttgart, for the reasons discussed above. In addition, Miller argues that eventual construction of a station north of Fordyce, where Channel 269A has also been assigned, would further reduce the site area available for Channel 269A at Stuttgart. WHR, replying to Miller's supplemental comments, submitted engineering data to substantiate its claim that at least a portion of the Channel 269A site area could support a transmitter tower and studio. WHR's contentions to the contrary notwithstanding, we would be constrained from assigning Channel 269A to Stuttgart, since Miller has indicated that he is not interested in applying for it.

5. Both Miller and WHR submitted Roanoke Rapids[6] data. Although this is ordinarily not required in cases where a first FM assignment of a Class A channel is sought, it may be used as a comparative factor in deciding between two mutually incompatible assignments. Miller's engineering data indicates that assignment of Channel 288A to Stuttgart would provide 5,138 persons in an area of 825 square kilometers (321 square miles) with a first nighttime aural service and 5,145 persons in an area of 423 square kilometers (164 square miles) with second nighttime aural service.[7] WHR submitted data purporting to show that assignment of Channel 288A to West Helena would provide first nighttime service to 4,697 persons in a

[1] The required spacing between co-channel Class A stations is 104 kilometers (65 miles).

[2] Former call letters KKLF.

[3] Population figures are taken from the 1970 U.S. Census.

[4] Former call letters WKDL.

[5] This limitation would be imposed by the granting of the application of Coastal to relocate the transmitter site of Station KMJX, Conway, Arkansas.

[6] 9 F.C.C. 2d 672 (1967).

[7] WHR disputed these figures on the grounds that Miller overlooked the proposed modification of Station KOTN(FM), Pine Bluff, Arkansas, which would reduce them to 1,479 persons in a 350 square kilometer (135 square miles) area for first nighttime service and 4,156 persons in a 450 square kilometer (175 square miles) for second nighttime service. However, the assignment of Channel 224A to Conway, Arkansas, effectively prevented the modification of Station KOTN at the proposed site, so that Miller's figures remain operative. See *Mayflower, Conway, and Jacksonville, Arkansas*, BC Docket No. 78–220, 44 FR 74836, released December 18, 1979.

252 square kilometer (98 square miles) area and second nighttime service to 16,423 persons in a 915 square kilometer (357 square miles) area.

6. Coastal's comment points out that its proposed site change is not incompatible with the assignment of Channel 288A to Stuttgart, as Miller suggests in his supplemental comments. Coastal contends that a site limitation 2 kilometers (1 mile) east of that originally proposed by Miller would solve the short-spacing problem created by relocation of Station KMJX. Additionally, Coastal submitted engineering data to confirm that this site limitation would not significantly reduce Miller's ability to provide the requisite coverage to Stuttgart. Alternatively, Coastal suggests a waiver of the separation requirements in this case, to permit the slight short-spacing between Conway and Stuttgart. However, we do not believe waiver to be appropriate or necessary here, since we are assured that there are non-short-spaced sites available for Channel 288A at Stuttgart, even in the event of a relocation of the site for Station KMJX.

7. Although WHR and Miller have actively pursued the assignment of Channel 288A to each proposed community throughout the pleadings, staff study indicates that Channel 285A is available for assignment to West Helena, with approximately the same site restriction as assignment of Channel 288A would have required. This leaves Channel 288A available for assignment to Stuttgart, and neither community need be deprived of a first FM service. We believe that this result would best serve the public interest, and, consequently, we shall assign Channel 288A to Stuttgart, with a site limitation of 7 kilometers (4.5 miles) east-southeast of the community, and Channel 285A to West Helena, with a site limitation of 5 kilometers (3 miles) southwest of the community.

8. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, it is ordered, that effective June 26, 1980, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended with respect to the communities listed below as follows:

City	Channel No.
Stuttgart, Ark	288A
West Helena, Ark	285A

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning this proceeding, contact Molly Pauker, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-15815 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Halibut; Final Regulations

50 CFR Part 301

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Notice of final regulations.

SUMMARY: The Assistant Administrator for Fisheries, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery for 1980.

The purpose of this regulation is to achieve conservation measures, and protective measure where necessary, to help rebuild and sustain at an adequate level the halibut stocks of the northern Pacific Ocean and the Bering Sea.

EFFECTIVE DATE: May 20, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, (907) 586-7221, or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington, 98105, (206) 634-1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), pursuant to the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Ottawa on March 2, 1953, as amended by a Protocol Amending the Convention, signed at Washington on March 29, 1979, has promulgated regulations governing the Pacific Halibut Fishery for 1980. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada, by Order-in-Council. On behalf of the International Commission, the regulations are now published in order to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein. The regulations are very similar to those which have been in effect in previous years under the Convention.

Signed this 20th day of May, 1980 at Washington, D.C.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

50 CFR Part 301 is revised to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

301.1 Regulatory areas.
301.2 Commercial fishing for halibut.
301.3 Fishing seasons.
301.4 Closed periods.
301.5 Closed area.
301.6 Catch limits.
301.7 Size limits.
301.8 Licensing of vessels.
301.9 Requirements for halibut processors.
301.10 Fishing gear.
301.11 Retention of tagged halibut.
301.12 Supervision of unloading and weighing.
301.13 Sport fishing for halibut.
301.14 Previous regulations superseded.

Authority: 5 UST 5; TIAS 2900 16 USC 772-772j.

§ 301.1 Regulatory Areas

(a) "Convention waters" means the waters off the west coasts of the United States and Canada, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each Party exercises exclusive fisheries jurisdiction as of March 29, 1979. For purposes of this Convention, the "maritime area" in which a Party exercise exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of that Party. All bearings are magnetic unless otherwise stated, and all positions are determined by the most recent charts issued by the United States Coast and Geodetic Survey or National Ocean Survey.

(b) Area 2 includes all waters east of a line running northwest one-quarter west (312°) from Cape Spencer Light (latitude 58° 11' 57" N., longitude 136° 38' 18" W.), and south and east of a line running south one-quarter east (177°) from said light.

(c) Area 3 includes all waters north and west of Area 2 that are east of the meridian of 170° W., excluding the Bering Sea.

(d) Area 4 includes all waters in the Bering Sea and all waters in the Gulf of Alaska west of the meridian of 170° W.

(e) The boundary between Area 3 and Area 4 is from Cape Kabuch Light (latitude 54° 49' 00" N., longitude 163° 21' 36" W.) to Cape Sarichef Light (latitude 54° 36' 00" N., longitude 164° 55' 42" W.); then to point in Pumicestone Bay on Unalaska Island (latitude 53° 31' 45" N., longitude 166° 58' 15" W.); then to Anangula (Ananiuliak) Island Light (latitude 52° 59' 48" N., longitude 168° 55' 06" W.); then to the point of intersection with the meridian of 170° W. on Chuginadak Island (latitude 52° 49' 42" N., longitude 170° 00' 00" W.); then true south.

§ 301.2 Commercial fishing for halibut.

The regulations and requirements in Sections 301.3 to 301.12 of these regulations pertain only to commercial fishing. The regulations for sport fishing are listed in Section 301.13.

§ 301.3 Fishing seasons.

(a) In Area 2 the fishing season shall be divided into four periods providing that the catch limit specified in Section 301.6 of these regulations is not taken earlier. The first period, in the maritime area in which the United States exercise exclusive fisheries jurisdiction, shall begin on May 20 and terminate on May 30, and in the maritime area in which Canada exercises exclusive fisheries jurisdiction, shall begin on May 20 and terminate on June 3. All subsequent fishing periods are identical for United States and Canadian waters and are as follows. The second period shall begin on July 15 and terminate on July 29. The third period shall begin on August 12 and terminate on August 26. The fourth period shall begin on September 9 and terminate on September 23. Each fishing period shall begin at 1500 hours and terminate at 0600 hours on the designated dates.

(b) In Area 3, the fishing season shall be divided into four periods providing that the catch limit specified in Section 301.6 of these regulations is not taken earlier. The first period shall begin on May 19 and terminate on June 4. The second period shall begin on July 15 and terminate on July 31. The third period shall begin on August 12 and terminate on August 26. The fourth period shall begin on September 9 and terminate on September 23. Each fishing period shall begin at 1500 hours and terminate at 0600 hours on the designated dates.

(c) In Area 4 the fishing season shall be divided into two periods provided that the catch limit specified in Section 301.6 of these regulations is not taken earlier. The first period shall begin on April 10 and terminate on April 30. The second period shall begin 20 days after the last closure of Area 3 as provided in Section 301.3(b) and terminate on November 15. Each fishing period shall begin at 1500 hours and terminate at 0600 hours on the designated dates.

(d) All hours of opening and closing shall be Pacific Standard Time.

§ 301.4 Closed periods.

(a) All waters shall be closed to commercial halibut fishing except as provided in Section 301.3 of these regulations, and the retention and landing of any halibut caught during any closed period is prohibited.

(b) Except as provided in Section 301.10(c), these regulations shall not prohibit fishing for species of fish other than halibut during the closed periods, provided that it shall be unlawful for a vessel to have halibut aboard, or for any person to have halibut in his possession while so engaged. Nor shall these regulations prohibit the International Pacific Halibut Commission, hereinafter referred to as "the Commission", from conducting or authorizing fishing operations for research purposes.

§ 301.5 Closed area.

All waters in the Bering Sea (Area 4) that are east of a line from Cape Sarichef Light to a point northeast of St. Paul Island (latitude 57° 15' 00" N., longitude 170° 00' 00" W.); and south of a line from the latter point to Cape Newenham (latitude 58° 39' 00" N., longitude 162° 10' 25" W.) are closed to halibut fishing and no person shall fish for halibut therein, or shall have halibut in his possession therein except in the course of a continuous transit across the area.

§ 301.6 Catch limits.

(a) The total allowable catch of halibut to be taken in Area 2 during the halibut fishing periods shall be limited to 9,300,000 pounds (4,218 metric tons). It shall be divided as follows: 3,200,000 pounds (1,452 metric tons) of the total allowable catch may be caught in the maritime area in which the United States exercises exclusive fisheries jurisdiction, and 6,100,000 pounds (2,767 metric tons) in the maritime area in which Canada exercises exclusive fisheries jurisdiction.

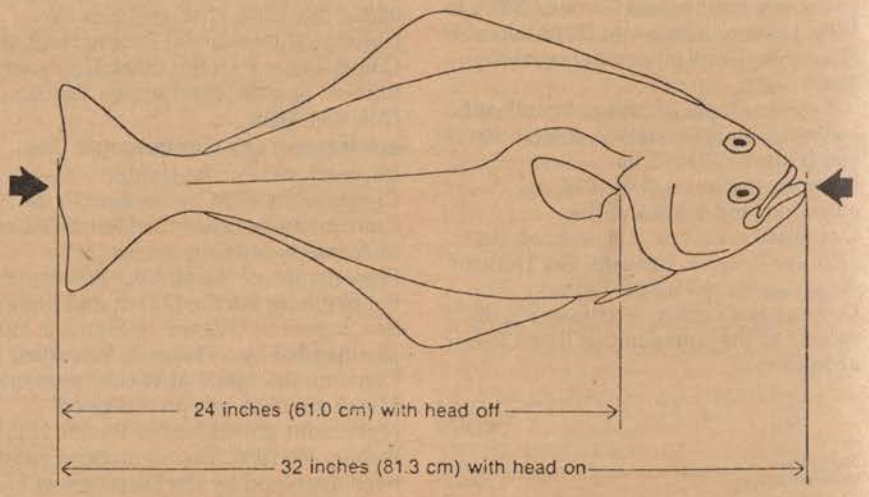
(b) The total allowable catch of halibut to be taken in Area 3 during the halibut fishing periods shall be limited to 10,000,000 pounds (4,536 metric tons).

(c) The total allowable catch of halibut to be taken in Area 4 during the halibut fishing periods shall be limited to 1,000,000 pounds (454 metric tons).

(d) The Commission will determine and announce the dates on which the catch limits will be attained in each area. Fishing for halibut in the area will be prohibited after that date.

§ 301.7 Size limits.

(a) No person, firm or corporation shall take or have in possession any halibut that with head on is less than 32 inches (81.3 centimeters) as measured in a straight line, passing over the pectoral fin, from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail. If the head has been removed, a size limit of not less than 24 inches (61.0 centimeters) as measured from the base of the pectoral fin, at its most anterior point, to the extreme end of the middle of the tail shall apply (see illustration on back page).



Minimum commercial size.

(b) It is unlawful for any person while on a fishing vessel and engaged in commercial fishing to mutilate or otherwise disfigure a halibut in any manner which prevents determining the minimum sized set forth under paragraph (a) of this section.

§ 301.8 Licensing of vessels.

(a) All vessels 5 net tons or over that fish for halibut with setline gear must be licensed by the Commission. Vessels of less than 5 net tons or vessels which use hook and line gear other than setlines do not need a Commission license. The Commission's license requirements do not obviate licensing requirements of State or Federal Governments.

(b) The halibut license must be carried on the vessel at all times and shall be subject to inspection by customs and fishery officers of the Governments of Canada or the United States, hereinafter referred to as "the Governments" or by representatives of the Commission.

(c) The halibut license shall be issued without fee by customs or fishery officers of the Governments or by representatives of the Commission. Halibut licenses need not be renewed except that a new license is required for a vessel that is sold, transferred, renamed or redocumented.

(d) The captain or operator of any vessel licensed under these regulations that shall fish for halibut in Area 4 shall notify the Commission representative at Sand Point, Alaska, or the Commission headquarters in Seattle, Washington, by telephone at least 48 hours before entering the area and at least 48 hours before halibut taken in the area are unloaded at any port outside the area.

(e) A halibut license shall not be valid for halibut fishing nor for possession of halibut in any area closed to halibut fishing except while in transit to an area open to halibut fishing, or to or within a port of sale. The license shall be invalid for the possession of halibut if the licensed vessel if fishing or attempting to fish for any species of fish in any area closed to halibut fishing.

(f) Any vessel which is not required to be licensed for halibut fishing under paragraph (a) of this section of these regulations shall not possess any halibut of any origin in any area closed to halibut fishing except while in actual transit to or within a port of sale.

(g) No person on any vessel required to be licensed under Section 8 shall fish for halibut or have halibut in his possession, unless said vessel has a valid license issued in conformity with the provisions of this section.

(h) The captain or operator of any vessel holding a license under these regulations shall keep an accurate log of all fishing operations including date, locality, amount of gear used, and amount of halibut taken daily in each such locality. This log record shall be retained for a period of two years and shall be open to inspection by authorized representatives of the Commission.

(i) The captain, operator or any other person engaged on shares in the operation of any vessel licensed under these regulations may be required by the Commission or by any officer of the Governments to certify to the correctness of such log record to the best of his information and belief and to support the certificate by a sworn statement.

§ 301.9 Requirements for halibut processors.

(a) All persons, firms or corporations that buy halibut or receive halibut from fishing or transporting vessels or other carrier shall keep records of each purchase or receipt of halibut, showing date, locality (statistical area), name of vessel, person, firm or corporation purchased or received from and the amount in pounds according to trade categories of the halibut.

(b) These records shall be retained for a period of two years and shall be open to inspection by officers of the Governments or by any authorized representative of the Commission. Such persons, firms or corporations may be required to certify to the correctness of such records and to support the certificate by a sworn statement.

(c) The possession of halibut known to have been taken in contravention of these regulations is prohibited.

§ 301.10 Fishing gear.

(a) Halibut are to be taken only with hook and line gear. The retention or possession of halibut taken with any other gear, such as nets or pots, is prohibited.

(b) The retention or possession of halibut is prohibited when any commercial fishing gear other than hook and line gear or nets used solely for the capture of bait are on board.

(c) No person or vessel that has deployed any longline fishing gear in any area of convention waters during the 72 hours immediately preceding the opening of any applicable halibut fishing period shall catch, retain, or possess halibut in convention waters prior to the opening of the succeeding halibut fishing period.

§ 301.11 Retention of tagged halibut.

Nothing contained in these regulations shall prohibit any vessel at any time from retaining and landing a halibut which bears a Commission tag at the time of capture, provided that the halibut with the tag still attached is reported at the time of landing and made available for examination by representatives of the Commission or by officers of the State, Provincial or Federal Governments.

§ 301.12 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of customs or other authorized officers to assure the fulfillment of the provisions of these regulations.

§ 301.13 Sport fishing for halibut.

(a) Sport fishing is permitted from March 1 to October 31, and may be conducted with a hook attached to handline or rod, or by spear. Not more than two halibut of any size per person per day shall be caught, possessed or landed from a vessel that is engaged in sport fishing. After two halibut have been taken by any person, those halibut shall be landed before that person takes more halibut on any succeeding day.

(b) No sport-caught halibut shall be possessed aboard a vessel when the fish or shellfish aboard said vessel are destined for commercial use (sale, trade or barter).

§ 301.14 Previous regulations superseded.

These regulations shall supersede all previous regulations of the Commission. These regulations shall be effective each succeeding year, until superseded.

Michael Hunter, *Chairman,*
Robert W. Schoening, *Vice Chairman,*
Neils M. Evens
Willian S. Gilbert
John A. O'Connor
Peter C. Wallin

Approved by: The Governor-General of Canada, by Order-In-Council, The Secretary of State of the United States of America.

[FR Doc 80-15782 Filed 5-22-80; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Hunting and Sport Fishing; National Wildlife Refuges in Montana and Wyoming

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting and sport fishing of certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which hunting and sport fishing will be permitted on portions of certain National Wildlife Refuges in Montana and Wyoming.

DATES: June 1, 1980, through May 31, 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager, or appropriate Refuge Manager, at the address or telephone number listed below:

Wally Steucke, Area Manager, U.S. Fish and Wildlife Service, Room 3035, Federal Building, 316 North 26th Street, Billings, Montana 59101. Telephone: (406) 657–6115.

Robert Pearson, Refuge Manager, Benton Lake National Wildlife Refuge, P.O. Box 450, Black Eagle, Montana 59414. Telephone: (406) 727–7400.

Eugene Sipe, Refuge Manager, Bowdoin National Wildlife Refuge, P.O. Box J, Malta, Montana 59538. Telephone: (406) 654–2863.

Ralph Fries, Refuge Manager, Charles M. Russell, UL Bend, and Lake Mason National Wildlife Refuges, P.O. Box 110, Lewistown, Montana 59457. Telephone: (406) 538–8707.

Robert Twist, Refuge Manager, Lee Metcalf National Wildlife Refuge, P.O. Box 257, Stevensville, Montana 59870. Telephone: (406) 777–5552.

Robert C. Brown, Refuge Manager, National Bison Range, Moiese, Montana 59824. Telephone: (406) 644–2354.

Eugene D. Stroops, Refuge Manager, Red Rock Lakes National Wildlife Refuge, Monida Star Route, Box 15, Lima, Montana 59739. Telephone: (406) 276–3347.

Jay Bellinger, Refuge Manager, Medicine Lake National Wildlife Refuge, Medicine Lake, Montana 59247. Telephone: (406) 789–2305.

John E. Wilbrecht, Refuge Manager, National Elk Refuge, Box C, Jackson, Wyoming 83001. Telephone: (307) 733–9212.

SUPPLEMENTARY INFORMATION: *General:* Hunting and sport fishing on portions of the following refuges shall be in accordance with applicable State and Federal seasons and regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to hunting and sport fishing are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) That any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) That funds are available for the development, operation and maintenance of the permitted forms of recreation.

The recreational uses authorized by these regulations will not interfere with the primary purposes for which the following National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Sections 32.12, 32.22 and 32.32 are amended by adding the following:

§ 32.12 Special Regulations: Hunting of migratory game birds for individual wildlife refuge areas.

Montana

Benton Lake National Wildlife Refuge

Hunting of geese, ducks, coot and mergansers is permitted on approximately 4,100 acres of the Benton Lake National Wildlife Refuge, Black Eagle, Montana.

The following special regulations apply:

1. The refuge will be open to hunting from one-half hour before sunrise to 12:00 noon on the first two days of the general waterfowl season only. Thereafter, hunting hours will be from one-half hour before sunrise to sunset each day.

2. Refuge roads and dikes are closed to hunting. Hunters with retrievers or boats may hunt from the specifically posted 5/6 dike area.

3. Access to and from refuge hunting areas will be on designated roadways only. (This prohibits access from the refuge onto adjacent private lands.)

4. Vehicle travel will be restricted to designated roadways and parking will be restricted to designated parking areas.

5. Hunters are prohibited from constructing permanent blinds on the refuge. Hunting blinds are provided by the refuge. Daily occupancy of the blinds will be on a first-come, first-served basis.

6. Boats without motors may be used in conjunction with waterfowl hunting activities.

7. Hunting of migratory game birds closes November 30.

Bowdoin National Wildlife Refuge

Hunting of migratory waterfowl and coot is permitted on approximately 6,200 acres of the Bowdoin National Wildlife Refuge, Malta, Montana.

Charles M. Russell and UL Bend National Wildlife Refuges

Hunting of migratory game birds is permitted on approximately 700,000 acres of the Charles M. Russell and UL Bend National Wildlife Refuges, Lewistown, Montana. Vehicle travel is permitted only on designated roads and trails and all off-road vehicle traffic is prohibited.

Lake Mason National Wildlife Refuge

Hunting of migratory game birds is permitted on approximately 1,600 acres of Lake Mason National Wildlife Refuge, Lewistown, Montana.

Vehicle parking is permitted only in designated areas. No motorized watercraft is allowed. Vehicle travel is permitted only on designated roads and trails.

Lee Metcalf National Wildlife Refuge

Hunting of ducks, geese, coots and mergansers is permitted on portions of Lee Metcalf National Wildlife Refuge, Stevensville, Montana.

The following special regulations apply:

1. All hunters must enter the public hunting area through appropriate check stations.

2. Hunters will be limited to three shells per duck of the daily bag limit.

3. All hunters must set blind selection pointer to "taken" upon selecting a blind, and return blind selection pointer to "open" upon leaving the hunting area.

4. Placing blind selection pointer to "taken" determines the occupant of the blind.

5. During periods of high hunter demand, as determined by the Refuge Manager, hunters will be limited to one period only during a day: Period No. 1: Start of shooting hours to 12:00 noon. Period No. 2: 1:00 p.m. until close of shooting hours.

6. Hunters must be within ten feet of designated blind sites while attempting

to take and taking of waterfowl game birds.

7. Blind sites will be limited to five hunters each.

8. A designated area will be open to the taking of ducks, geese, coot and mergansers by means of falconry from the opening of the migratory waterfowl season through end of general deer season. No firearms may be carried in this area.

9. The public hunting area will be closed to entry from one hour after sunset until 1½ hours before sunrise.

10. No fishing equipment of any type will be permitted on the public hunting area.

11. Boats are not permitted.

Medicine Lake National Wildlife Refuge

Migratory game bird hunting is permitted on the Medicine Lake National Wildlife Refuge, Montana, only on the area designated by signs as being open to migratory game bird hunting. This area comprises 10,163 acres and is delineated on maps available at the refuge headquarters and from the office of the Area Manager. Vehicle travel is permitted only on designated trails.

Red Rock Lakes National Wildlife Refuge

Migratory game bird hunting is permitted only on areas designated by signs as being open to such hunting. This area comprises approximately 10,000 acres.

Swan River National Wildlife Refuge (Headquarters National Bison Range)

Hunting of migratory game birds is permitted on approximately 630 acres. The hunting area is delineated on maps available at Creston National Fish Hatchery, Kalispell, and National Bison Range, Moiese, Montana.

§ 32.22 Special Regulations: Hunting of upland game birds for individual wildlife refuge areas.

Montana

Bowdoin National Wildlife Refuge

Hunting of upland game birds is permitted on approximately 6,200 acres of Bowdoin National Wildlife Refuge, Malta, Montana.

Charles M. Russell and UL Bend National Wildlife Refuges

Sage grouse, sharp-tailed grouse, gray partridge, and ring-necked pheasant hunting is permitted on approximately 700,000 acres of the Charles M. Russell National Wildlife Refuge and UL Bend National Wildlife Refuges, Lewistown, Montana.

Vehicle travel is permitted only on designated roads and trails, and all off-road vehicle traffic is prohibited.

Medicine Lake National Wildlife Refuge

Upland game bird and jackrabbit hunting is permitted on the Medicine Lake National Wildlife Refuge, Montana, only on the areas designated by signs as being open to upland game hunting. These areas comprising 10,163 acres are delineated on maps available at the refuge headquarters and from the office of the Area Manager. Vehicle travel is permitted only on designated trails.

§ 32.32 Special Regulations: Hunting of big game for individual wildlife refuge areas.

Montana

Charles M. Russell and UL Bend National Wildlife Refuges

Either sex elk, either sex antelope and antlered mule deer may be hunted with firearms on the Charles M. Russell and UL Bend National Wildlife Refuges, Lewistown, Montana. Either sex white-tailed deer may also be hunted in Phillips, Valley, McCone, Fergus and Garfield Counties. In addition, either sex elk, mule deer, and white-tailed deer archery hunting is permitted. These areas comprise approximately 750,000 acres.

Vehicle travel is permitted only on designated roads and trails and all off-road vehicle traffic is prohibited, including the retrieval of downed game.

Lee Metcalf National Wildlife Refuge

The taking of white-tailed and/or mule deer by bow and arrow will be permitted on designated areas of Lee Metcalf National Wildlife Refuge by means of archery only. The following special conditions apply:

1. All hunters must check in and out at checking stations.

2. No firearms may be carried in this area.

3. The public hunting area will be closed to entry from one hour after sunset until one and one-half hours before sunrise.

Medicine Lake National Wildlife Refuge

Big game hunting is permitted on the Medicine Lake National Wildlife Refuge, Montana, only on the areas designated by signs as being open to big game hunting. These areas, comprising 10,163 acres, are delineated on maps available at the refuge headquarters and from the office of the Area Manager. Unlimited vehicle travel is permitted only on county roads. In the hunting areas, vehicle travel is permitted only for the retrieval of deer on designated retrieval roads. Horses may be used only for the retrieval of big game.

Red Rock Lakes National Wildlife Refuge

Big game hunting is permitted only on areas designated by signs as being open to such hunting. These areas comprise approximately 20,000 acres.

Wyoming

National Elk Refuge

Hunting of elk on the National Elk Refuge, Jackson, Wyoming, is permitted on approximately 16,327 acres. Hunting shall be in accordance with the following special conditions:

1. A special permit is required in addition to a valid current State elk hunting license. One hundred twenty special permits (for three hunt periods each week) shall be issued to applicants by drawing.

2. Persons without permits may accompany special permit holders, but only permit holders may be armed. Anyone entering hunt area must wear flourescent orange.

3. Permits will be revoked in the event of a violation of refuge regulations and can result in denial of future privileges on the refuge.

4. Access to the refuge is only through the main gate east of refuge headquarters in Jackson.

5. Vehicles must be parked only in designated parking areas. No camping is allowed on refuge, including parking lots and hunt area.

6. All motorized travel is prohibited in the hunt area, except that vehicles will be permitted on designated roads after 4:00 p.m. to dark each day to facilitate retrieval of elk killed. Horses are permitted.

7. Citizens Band (C.B.) radios are not allowed in hunt areas.

The provisions of these special regulations supplement the regulations which govern hunting or wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

Section 33.5 is amended as follows:

§ 33.5 Special Regulations: Sport fishing for individual wildlife refuge areas.

Montana

Charles M. Russell and UL Bend National Wildlife Refuges

Sport fishing is permitted year round on all waters of the Missouri River, Musselshell River, and Fort Peck Reservior within the Charles M. Russell

National Wildlife Refuge and the UL Bend National Wildlife Refuge, Montana. These fishing areas comprise approximately 250,000 acres and are delineated on maps available at the refuge headquarters in Lewistown, Montana. All sport fishing shall be subject to the following regulations:

1. Portable icehouses and other structures expressly used for ice fishing are permitted within the Charles M. Russell National Wildlife Refuge only from December 1 through March 31 of the following year. These structures must be removed from the wildlife refuge entirely by March 31 of each year. In addition, each structure must be labeled with the owner's name permanent address in a prominent location on an outside sidewall.

Violations of this regulation will be treated under the provisions of Parts 27.92 and 27.93 of Title 50 of the Code of Federal Regulations, dealing with unauthorized private structures and abandoned property. Penalties described in Part 28 will be applicable.

2. Vehicle travel is permitted only on designated roads and trails and all off-road vehicle traffic is prohibited.

Lee Metcalf National Wildlife Refuge

Sport fishing using only a single line and hook or hooks, with or without a pole, is permitted throughout the year on a portion of the Lee Metcalf National Wildlife Refuge. The open area is approximately four miles of the Bitterroot River, which borders the refuge on the west, and the Burnt Fork Creek and its related oxbow (Francois Slough). Fishermen must remain below the upland portion of the river banks. The fishing area is designated by signs and delineated on maps available at refuge headquarters, Stevensville, Montana.

Medicine Lake National Wildlife Refuge

Sport fishing is allowed on waters of the Medicine Lake National Wildlife Refuge as follows: Medicine Lake, Deep Lake, and Sayer Bay, November 15-September 15, waters in the public hunting area August 15-March 31 and Number 12 Lake, November 15 through March 31. In Medicine Lake all motorized equipment is prohibited and no trespassing is allowed on islands. Waters other than Medicine Lake are open to motor boats with less than 16 h.p. motors. Open fires, camping and driving off improved roads or established trails are prohibited on the public fishing areas. Maps of the fishing area are available at refuge headquarters.

National Bison Range

Sport fishing on the National Bison Range, Moiese, Montana, is only permitted along the portions of the Jocko River as posted. These open areas are delineated on maps available at refuge headquarters, one-half mile east of Moiese, Montana.

Ninepipe National Wildlife Refuge (Headquarters National Bison Range, Moiese, Montana)

Entire refuge is open from July 15, until beginning of waterfowl hunting season, and before July 15 on west and north shorelines from picnic area to Allentown bridge, except central portion of north shore (9/10 of a mile), as posted. Entire refuge is closed during migratory waterfowl hunting season. Ice fishing is permitted after the closure of waterfowl hunting season until March 1. A Tribal Recreation Permit is required.

Sport fishing is permitted in accordance with the following special regulations:

1. Offshore islands are closed to fishing and trespass.
2. Use of boats if prohibited.
3. Vehicles must be parked at designated areas.
4. Motorized travel on the ice is prohibited.
5. No ice fishing shelters may be left overnight.
6. Camping is prohibited.

Pablo National Wildlife Refuge (Headquarters National Bison Range, Moiese, Montana)

Sport fishing is not permitted on Pablo Reservoir during the migratory waterfowl hunting season. Sport fishing is permitted during the rest of the year, in accordance with the special regulations shown below, on the north and east shorelines from the inlet canal to the south end of the dam as posted. Ice fishing is permitted after the closing of the waterfowl hunting season. A Tribal Recreation Permit is required.

Sport fishing is permitted in accordance with the following special regulations:

1. Offshore islands are closed to fishing and trespass.
2. Use of boats if prohibited.
3. Vehicles must be parked at designated areas.
4. Motorized travel on the ice is prohibited.
5. No ice fishing shelters may be left overnight.
6. Camping is prohibited.

Northwest Montana Waterfowl Production Areas (Headquarters National Bison Range, Moiese, Montana).

Flathead Lake Waterfowl Production Area and Smith Lake Waterfowl Production Area are open to sport fishing. Fishing from shore is prohibited, from March 1 to July 15, on lands within the boundary of posted Waterfowl Production Areas. All islands at the mouth of the Flathead River are closed to trespass except during the waterfowl hunting season. The following special regulations apply to fishing:

1. Vehicle travel is permitted only on designated roads and parking areas.
2. Camping is prohibited.

Swan River National Wildlife Refuge (Headquarters National Bison Range, Moiese, Montana)

Sport fishing is permitted on those parts of the Swan River and Swan Lake which lie within the boundaries of Swan River National Wildlife Refuge. Fishing from shore within the refuge is prohibited from March 1 to July 15. Fishing is subject to the following regulations:

1. Vehicle travel is permitted only on designated roads and parking areas.
2. Camping is prohibited.

Red Rock Lakes National Wildlife Refuge

Sport fishing is permitted on the Red Rock Lakes National Wildlife Refuge, Montana, as posted. Fishing opens the third Saturday in June and closes November 30. All areas open to fishing are delineated on maps available at the refuge headquarters and from the office of the Area Manager, subject to the special condition that boats with motors are prohibited.

Wyoming

National Elk Refuge

Sport fishing is permitted from Saturday preceding Memorial Day through October 31, only on the areas designated by signs as being open to fishing. Fishing and access on refuge waters are permitted during daylight hours only. Use of boats or other floating devices, overnight camping, and fires are prohibited.

The provisions of these special regulations supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044, 43 CFR Part 14.

Dated: May 13, 1980.

Wally Steucke,

Area Manager.

[FR Doc. 80-15658 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 45, No. 102
Friday, May 23, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 511

Classification Under the General Schedule

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: These proposed regulations would: [A] incorporate changes mandated by Presidential Reorganizational Plan No. 2; [B] incorporate changes mandated by the Civil Service Service Reform Act of 1978; and [C] incorporate changes to streamline the administrative classification review process and increase the level of classification consistency Governmentwide.

DATE: Written comments will be considered if received no later than July 22, 1980.

ADDRESS: Send or deliver written comments to the Office of Personnel Management, Classification Review Division, Room 443–H, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Frank Cantenaccio, Classification Review Division, Agency Compliance and Evaluation, Office of Personnel Management, Room 443–H, 1900 E Street, N.W., Washington, D.C. 20415, telephone (202) 632–7744.

SUPPLMENTARY INFORMATION: OPM has determined that this is a significant regulation for the purposes of EO 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR Part 511 as set out below:

(1) The table of sections is revised to read as follows:

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

Subpart A—General Provisions

Sec.
511.101 Definitions.

Subpart B—Coverage of the General Schedule

511.201 Coverage of and exclusions from the General Schedule.
511.202 Authority of agency.
511.203 Exercise of authority.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Administrative Classification Reviews

511.601 Applicability of regulations.
511.602 Notification of classification decision.
511.603 Right to request a review.
511.604 Requesting a review.
511.605 Time limits.
511.606 Form and contents of review.
511.607 Issues excluded from review.
511.608 Employee representatives.
511.609 Ascertainment of facts.
511.610 Notification.
511.611 Cancellation of employee request.
511.612 Finality of decision.
511.613 Classification review division.
511.614 Review by the director.
511.615 Temporary compliance authority.

Subpart G—Effective Dates of Position—Classification Actions or Decisions

511.701 Effective dates generally.
511.702 Agency or Office classification review decisions.
511.703 Retroactive effective date.

Authority: The provisions of this Part 511 issued under 5 U.S.C. 5115, 5338, 5351, unless otherwise noted.

(2) Subparts F and G are revised to read as follows:

Subpart F—Administrative Classification Reviews

§ 511.601 Applicability of regulations.

This subpart applies to a request from an employee or an agency for the Office to review the classification of a position subject to chapter 51 of title 5, United States Code, or for the Office to determine whether a position is subject to that chapter.

§ 511.602 Notification of classification decision.

An employee who suffers a loss of grade which is based in whole or in part on a classification decision is entitled to a prompt written notice from the agency. If the loss of grade is due to an Office classification certificate issued under the authority of 5 U.S.C. 5110, the agency will also promptly notify the employee. This notice shall also inform the employee:

(a) Of his or her right to request a review of the classification decision by the agency (if it has the authority to take corrective action), or by the Office as provided in this subpart if such a review has not already been made; and

(b) Of the time limits within which the employee must request such review in order to preserve any retroactive benefits under § 511.703.

§ 511.603 Right to request a review.

(a) *Employee request.* An employee, or the employee's representative may request an Office decision as to:

(1) The appropriate class or grade of the employee's current position.

(2) The inclusion under or exclusion from chapter 51 of title 5, United States Code, of the position by the employee's agency or the Office, except in the case of a position in the Office of the Architect of the Capitol.

(b) *Agency request.* The head of an agency, or an authorized representative, may request a review of any classification certificate issued by the Office under section 5110 of title 5, U.S.C., with respect to any position in the agency.

§ 511.604 Requesting a review.

(a) *Employee.* An employee may request a review by writing to the Office directly, or by forwarding the request through the employing agency.

(b) Referral of an employee request to the Office. An agency shall forward, within 45 calendar days of its receipt in the agency, an employee's request filed through the agency to the Office when:

(1) The employee has directed the request to the Office and the agency does not act favorably on it; or

(2) The agency is not authorized to act on the employee's request.

§ 511.605 Time limits.

(a) *Employees.*

(1) An employee may submit a request for a classification review of his or her current position at any time.

(2) If the employee is requesting a review of an agency decision or an Office classification decision issued under 5 U.S.C. 5110 which resulted in a

loss of grade, the employee shall promptly request a review if he or she disagrees with the classification decision. Employees must meet the time limits provided in § 511.703 in order to preserve the right to retroactive adjustment.

(b) *Agency.* An agency may request a review of an Office classification certificate issued under authority of section 5103 or 5110 of title 5, United States Code.

(c) *Reconsideration.* An employee or agency may request reconsideration of an Office review decision. The request must be in writing, and filed not later than 45 days after the review decision is issued.

§ 511.606 Form and contents of review.

(a) Employee requested review. An employee's request shall be in writing, and shall contain the reasons why the employee believes his or her position is erroneously classified, or should be brought under or excluded from chapter 51 of title 5, United States Code. The agency, when forwarding the employee's request or when requested by the Office, shall furnish all relevant facts concerning the position and the agency's justification for its classification decision. The agency shall also comment on the information submitted by the employee if requested to do so by the Office.

(b) *Agency request.* An agency's request shall be in writing, and shall contain its reasons and justification for requesting a review of the Office's certificate.

(c) *Inspection of the file.* The employee, an employee's representative and the agency will be permitted to inspect the file on request.

§ 511.607 Issues excluded from review.

(a) The following issues are not subject to review by the Office under this subpart. Such issues may be reviewed under the appropriate grievance procedures:

(1) The accuracy of the official position description, and the inclusion or exclusion of a major duty in the official position description. When the accuracy of the official position description is questionable, the agency will be asked to review the position's duties, responsibilities and qualification requirements consistent with management's right to assign work. If the accuracy of the position description cannot be resolved in this manner, the Office will decide the request on the basis of the actual duties and responsibilities performed;

(2) An assignment or detail out of the scope of normally performed duties as outlined in the official position description;

(3) The accuracy, consistency or use of agency supplemental classification guides; or,

(4) The title of the position unless a specific title is authorized in a published Office classification standard or guide, or the title reflects a qualification requirement or authorized area of specialization.

(b) The following issues are not subject of review under this subpart nor under grievance procedures:

(1) The class, grade, or pay system of a position to which the employee is not officially assigned by an official personnel action;

(2) An agency's proposed classification decision;

(3) The class, grade, or pay system of a position to which the employee is detailed or temporarily promoted;

(4) The classification of the employee's position based on position-to-position comparisons;

(5) The accuracy of grade level criteria contained in an Office classification guide or standard; or

(6) A classification decision that has been issued by the Office under this subpart when there have been no changes in the governing classification standard(s) and the major duties of the position.

§ 511.608 Employee representatives.

An employee may select a representative of his or her choice to assist in the preparation and presentation of a request for review. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position; an employee who cannot be released from his or her official duties because of the priority needs of the Government; or an employee whose release would give rise to unreasonable costs to the Government.

§ 511.609 Ascertainment of facts.

The employee, a designated representative, and the agency shall furnish such facts as may be requested by the Office. These facts shall be in writing when so requested. The Office, in its discretion, may investigate or audit the position.

§ 511.610 Notification.

The Office shall notify the employee, or a representative if one is designated, and the agency in writing of its decision.

§ 511.611 Cancellation of an employee request.

An employee's request shall be cancelled and the employee so notified in the following circumstances:

(a) On receipt of the employee's written request for cancellation.

(b) On failure to prosecute, when the employee or the designated representative does not furnish requested information, or proceed with the advancement of the request for review. The Office may at its discretion reopen a cancelled review on a showing that circumstances beyond the control of the employee prevented pursuing of the request.

(c) On notice that the employee died or has left the position through a personnel action, except where the employee would be entitled to the retroactive benefits of § 511.703. An employee detail or temporary promotion will not be cause to cancel a pending review.

§ 511.612 Finality of decision.

A review decision made by the Office is final. There is no further right to review. The decision shall constitute a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Agencies shall review their own classification decisions of identical, similar or related positions to insure consistency with the Office's certificate.

§ 511.613. Classification review division.

The Office's Classification Review Division may, at its discretion, reopen and reconsider a decision made by the Office under this subpart. The Classification Review Division may remand to the respective region of the Office any request for reconsideration which requires extensive factfinding or investigation. The Classification Review Division may reopen and reconsider a decision when written argument or evidence is presented which establishes a reasonable doubt concerning the technical accuracy of the decision.

§ 511.614 Review by the director.

The Director may, at his or her discretion, reopen and reconsider any decision when written argument or evidence is submitted which tends to establish that:

(a) The previous decision involves an erroneous interpretation of law or regulation, or a misapplication of established policy;

(b) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case

at hand, or is otherwise of such an exceptional nature as to merit the personel attention of the Director.

§ 511.615 Temporary compliance authority.

Agencies may use temporary or conditional compliance actions, i.e., temporary promotions, details, etc., if:

(a) A position has been certified by the Office under sections 5110 or 5112 of title 5, United States Code;

(b) The certificate has not been suspended; and,

(c) the agency or employee has requested reconsideration.

This authority will not be used if the employee is entitled to grade retention under section 5326 of title 5, United States Code.

Subpart G—Effective Dates of Position Classification Actions or Decisions

§ 511.701 Effective dates generally.

(a) *Agency classification actions.* (1) A classification action is a determination to establish or change the title, series, grade or pay system of a position based on application of published position classification standards or guides. The effective date of a classification action or decision taken by an agency shall be the date an official with properly delegated authority approves (certifies) the classification action. This is accomplished when the authorized official(s) signs the allocation of the position.

(2) A classification action is implemented by a personnel action. The implementation must occur within a reasonable period of time. The Office may authorize extended implementation dates on written request of an agency.

(3) If the classification action requires a personnel action which results in a loss of grade to the incumbent of the position, the agency must advise the employee, in writing, of the classification action and the proposed date for the personnel action. This notice shall be issued prior to taking a personnel action.

(4) Neither classification actions nor personnel actions implementing these decisions may be made retroactive.

(b) *Office of Personnel Management's classification decision.* (1) The effective date of a classification decision made by means of a certificate issued under the authority of section 5110, title 5, United States Code is not earlier than the date of the certificate, and not later than the beginning of the fourth pay period following the date of the certificate, unless a subsequent date is specifically stated in the certificate. Except as otherwise provided by this paragraph, the filing of a request to review such a certificate does not delay its effective date.

(2) The implementation of the certificate may be suspended when it is determined before its effective date that a review of the classification decision is warranted and suspension is desirable. The determination to suspend implementation may be made by

(i) A regional, or a designee, when the decision is made by the regional office; or,

(ii) The Assistant Director, Agency Compliance and Evaluation, or a designee, when the decision is made within the central office or by a region, or

(iii) The Director with respect to any classification decision.

Suspending the implementation of a certificate does not automatically change the effective date except when the certificate required that the grade of the position be reduced and the employee is not entitled to grade retention.

(3) When the original decision requires that the grade of the position be reduced and the employee is not entitled to grade retention, the reviewing authority shall issue a new certificate if it sustains the original decision. The effective date of the new certificate shall be not earlier than the date of the certificate, and not later than the beginning of the fourth pay period after the date of the new certificate unless a subsequent date is specifically stated.

§ 511.702 Agency or office classification review decisions.

(a) Subject to § 511.703, the effective date of a change in the classification of a position resulting from a classification review by either an agency or the Office is not earlier than the date of the decision and not later than the beginning of the fourth pay period following the date of the decision, except when a subsequent date is specifically provided in the decision.

(b) The implementation of the decision may be suspended by the Office when it determines before the effective date that a review of the decision is warranted. The determination to suspend implementation may be made by:

(1) The regional director or a designee, when the review decision is made by an agency under the jurisdiction of the region; or

(2) The Assistant Director, Agency Compliance and Evaluation, or the Chief, Classification Review division when the review decision is made within the central office, by a region or by an agency; or

(3) The Director with respect to any review decision.

Suspending the implementation does not change the effective date of the decision except when the original decision requires that the grade of the position be reduced and the employee is not entitled to grade retention.

(c) When the original decision requires that the grade of the position be reduced and the employee is not entitled to grade retention, the reviewing authority, if sustaining the original decision, shall issue a new certificate and the effective date of the new certificate shall be not earlier than the date of the new decision and not later than the beginning of the fourth pay period following the date of the new decision unless a subsequent date is specifically stated in the new decision.

§ 511.703 Retroactive effective date.

(a) *Applicability.* A retroactive effective date may be required only if the employee is wrongfully demoted.

(b) *Downgrading.* (1) The effective date of a classification review certificate or agency review decision can be retroactive only if it corrects a classification action which resulted in a loss of grade. In order for the decision to be made retroactive, the employee must file the initial request for review with either the agency or the Office not later than 15 calendar days after the effective date of the reclassification action.

(2) However, if the review decision raises the grade of the position above the original grade, retroactivity will apply only to the extent of restoration to the original grade.

(3) The right to a retroactive effective date provided by this section is preserved on subsequent requests for review from an agency classification decision to the Office when the subsequent request is filed not later than 15 calendar days following receipt of written notification of final agency administration decision or 15 calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

(c) *Grade change based on new duties and responsibilities.* Retroactivity may be based only on duties and responsibilities existing at the time of demotion and cannot be based on duties and responsibilities assigned later.

(d) *Retroactivity when time limits are extended.* The right to a retroactive effective date provided by this section may be preserved at the discretion of the Office, on a showing by the employee that he was not notified of the

applicable time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented filing a request for review within the prescribed time limit.

[FR Doc. 80-15891 Filed 5-22-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

Milk in the Middle Atlantic Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend an order provision affecting the regulatory status of milk plants. The action was requested by a cooperative association and a handler operating a distributing plant. It would remove the limit on the type of pool plant that is qualified for pool plant status on the basis of being a pool plant during the prior September through February period. The suspension is proposed for May 1980 through August 1980.

DATE: Comments are due not later than May 30, 1980.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6273.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Middle Atlantic marketing area are being considered for May 1980 through August 1980:

In § 1004.7(e) the words "of paragraph (e)(1)" and the words "paragraph (b) of" as they first appear in the paragraph.

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.**

The period for filing comments is limited to 7 days because a longer period would not provide the time to complete the required procedures by the pool computation date for milk delivered in May.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for May 1980 through August 1980 the provisions that limit the type of pool plant that is qualified for pool plant status on the basis of being a pool plant during the prior September through February period. The proposed action was requested by Lehigh Valley Cooperative Farmers, who operates pool plants, and Michaels Dairies, Inc., a proprietary handler who operates a pool distributing plant.

Lehigh Valley Cooperative Farmers states that it is reorganizing its operations, and its reserve processing plant, that has been qualified for pool plant status on the basis of being operated by the cooperative, will no longer be owned by Lehigh Valley Cooperative Farmers.

Michaels Dairies, Inc., indicates that it expects its Class I disposition to be less than 40 percent of the milk supply associated with its distributing plant because of the loss of Class I milk sales volume to another handler. The handlers claim that the failure of their plants to meet the pooling requirements would result in the milk of producers who are regular suppliers on the market not being priced and pooled under the order. Proponents state that the temporary suspension action will permit the orderly marketing of the milk supply associated with their plants.

Signed at Washington, D.C., on: May 20, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-15925 Filed 5-22-80; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Plastic-Insulated Ground Wires; Advance Notice of Proposed Specification

AGENCY: Rural Electrification Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: REA proposes to prepare a new specification covering plastic-insulated ground wires. This specification will cover the minimum requirements necessary for production of quality ground wires. Currently these wires are covered by guidelines containing limited requirements which are not stringent enough to continually produce quality products. Therefore, a specification should be prepared containing more stringent requirements which will insure the continued quality of these wires.

DATE: Public comments must be received by REA no later than June 23, 1980.

ADDRESS: Submit written comments to the Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, telephone number AC(202)447-3827.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to prepare a new specification covering plastic-insulated ground wires.

All written submissions made pursuant to this notice will be made available for public inspection during regular business hours, address above.

Dated: May 13, 1980.

John H. Arnesen,

Assistant Administrator—Telephone.

[FR Doc. 80-15564 Filed 5-22-80; 8:45 am]

BILLING CODE 3410-15-M

7 CFR Part 1701

Coaxial Splicing Connectors, Advance Notice of Proposed Specification

AGENCY: Rural Electrification Administration.

ACTION: Advance Notice of Proposal Rule Making.

SUMMARY: REA proposes to prepare a new specification covering coaxial splicing connectors. This specification will cover the minimum requirements necessary for production of quality coaxial splicing connectors. Currently these connectors are not covered by any guidelines. Therefore, a specification should be prepared to insure that materials purchased by REA borrowers will provide reliable service to the rural public.

DATE: Public comments must be received by REA no later than June 23, 1980.

ADDRESS: Submit written comments to the Director, Telecommunications

Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, telephone number (202) 447–3827.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to prepare a new specification covering coaxial splicing connectors.

All written submissions made pursuant to this notice will be made available for public inspection during regular business hours, address above.

Dated: May 13, 1980.

John H. Arnesen,

Assistant Administrator—Telephone.

[FR Doc. 80–15565 Filed 5–22–80; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR–48–80, LR–71–80]

Crude Oil Windfall Profit Tax; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to title I of the Crude Oil Windfall Profit Tax Act of 1980.

DATES: The public hearing will be held on July 16, 1980, beginning at 10:00 a.m., and if necessary, on July 17, 1980. Outlines of oral comments must be delivered or mailed by July 2, 1980.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–48–80), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202–566–3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations published in two notices of proposed rulemaking appearing in the **Federal Register** for Friday, April 4, 1980 (45 FR 23384) and Friday, April 25, 1980 (45 FR 27929). These regulations were proposed under title 1 of the Crude Oil Windfall Profit Tax Act of 1980.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notices of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject by July 2, 1980.

Each speaker will be limited to one 10 minute oral presentation, whether on one or both notices, exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive on improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 80–15919 Filed 5–22–80; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

29 CFR Part 4

Service Contract Act; Labor Standards for Federal Service Contracts, Further Extension of Comment Period

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule; further extension of comment period.

SUMMARY: This document further extends the period for filing comments regarding a proposed rule intended to revise Part 4 of Title 29 of the Code of Federal Regulations (29 CFR Part 4) which concerns Labor Standards for Federal Service Contracts. This action is taken to permit additional comment from the public.

DATE: Comments must be received on or before June 26, 1980.

ADDRESS: Comments should be sent to Mrs. Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S–3502, 200 Constitution Avenue, NW., Washington D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C., 20210. Telephone: 202–523–8333.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 28, 1979 (44 FR 77036) the Department of Labor published a proposed rule intended to revise 29 CFR Part 4 which concerns Labor Standards for Federal Service Contracts. Interested persons were requested to submit comments on or before February 26, 1980. Extensions of the period for comment until May 27, 1980, have previously been granted.

Because of the continuing interest of the public in this proposal, the agency believes that it is desirable to grant a further extension of the comment period for all interested persons. Therefore, the comment period for the proposed rule, revising 29 CFR Part 4 (Labor Standards for Federal Service Contracts), is extended to June 26, 1980.

Signed at Washington, D.C., this 20th day of May, 1980.

Donald Elisburg,

Assistant Secretary of Labor, Employment Standards Administration.

[FR Doc. 80–15942 Filed 5–22–80; 8:45 am]

BILLING CODE 4510–27–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2613

Employer Liability for a Single Employer Plan Termination

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed regulation prescribes the rules for the determination and payment of employer liability under §§ 4062 and 4067 of the employee Retirement Income Security Act of 1974. In addition, portions of this regulation are also applicable to the

determination and payment of liability under §§ 4063 and 4064, which pertain to plans to which more than one employer contributes.

Section 4062 imposes liability on an employer who maintains a single employer defined benefit pension plan that terminates without sufficient assets to pay the liabilities guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"). The liability is equal to the amount by which the value of the plan's guaranteed benefits exceed plan assets at the date of plan termination, up to 30% of the employer's net worth. This proposed regulation sets forth the method by which PBGC will determine an employer's net worth and the rules for payment of the employer's liability, including provisions for deferred payment of the liability. The effect of the regulation if adopted would be to provide needed guidance with respect to the calculation and payment of an employer's statutory liability.

DATES: comments must be received on or before July 22, 1980.

ADDRESSES: Comments should be addressed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 7200, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. R. Goldstein, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006 (202) 254–4895.

SUPPLEMENTARY INFORMATION: Each person submitting comments should include his or her name and address, identify this notice and give reasons for any recommendation. This proposal may be changed in light of the comments received.

Overview

The Statute

Section 4062 of the Employee Retirement Income Security Act of 1974 (the "Act") provides that any employer who terminates a single employer plan covered under § 4021(a) of the Act shall be liable to the Pension Benefit Guaranty Corporation ("PBGC") for the lesser of (1) the amount by which the value of guaranteed benefits under the plan exceeds the value of plan assets (referred to as the "plan asset insufficiency" or "PAI"), or (2) 30 percent of the employer's net worth. Under §§ 4063 and 4064, liability for the withdrawal from or termination of a plan to which more than one employer contributes is computed by first determining what the liability would be under § 4062 and then allocating that amount among the liable employers.

Pursuant to § 4062(b), the PBGC is to value an employer's net worth as of a date chosen by PBGC, but not more than 120 days prior to the date of plan termination. Net worth is valued on whatever basis best reflects the current status and prospects of the employer's operation on the valuation date, and the employer's net worth includes the value of any assets transferred by the employer when PBGC determines that the transfers were improper under the circumstances (§ 4062(c)). Further, an employer's liability to PBGC under § 4062 is disregarded in making the net worth determination (§ 4062(b)).

PBGC is authorized under § 4067 of the Act to make arrangements with employers for payment of employer liability, including deferred payment terms, on such conditions and for such periods as the PBGC deems equitable and appropriate. Section 4068 of the Act imposes a lien in favor of the PBGC upon all assets of an employer for the amount of its employer liability, including interest, if the employer, upon demand, neglects or refuses to pay its liability.

The Proposed Regulation

Under § 2613.3 of the proposed rule, employer liability is due on the date of plan termination, and the liability is equal to the plan asset insufficiency ("PAI") unless the employer asserts that its liability is limited by its net worth and the PBGC determines that this is so. Interest on any unpaid portion of employer liability runs from the plan termination date. To avoid paying interest on its liability, an employer may pay the amount of the liability on or before the plan termination date.

Since the PBGC, which makes the determination of liability under this part, ordinarily will not have made its determination by the plan termination date, an employer's payment of the liability on or before the plan termination date must necessarily be based on the employer's estimate of the liability. However, the employer can estimate fairly accurately the upper limit of the liability by calculating the plan asset insufficiency. (By the time this regulation goes into effect, the PBGC expects to have implemented a system for publishing its interest rates for valuing plan benefits on a prospective basis.) The employer may then pay that amount, or, if the employer believes that its liability is limited by its net worth, it may pay the lesser amount it estimates to be the liability. If the employer's estimate turns out to be high and the employer has overpaid, proposed § 2613.7 provides that the overpayment will be refunded with interest from the date of payment (or, if later, from 10 days prior to the termination date). If the employer has underpaid, interest at the same rate will be assessed on the unpaid portion of the liability from the date of plan termination.

Whether the employer net worth limitation is pertinent in a given case depends upon information within the control of the employer. Accordingly, the proposed rule provides that PBGC will not determine an employer's net worth unless an employer notifies PBGC, pursuant to § 2613.3, that it believes the net worth limitation is applicable and demonstrates that 30% of its net worth is less than the PAI as required by proposed § 2613.6. An employer's failure to assert and demonstrate that net worth is limiting will result in the PBGC making an initial determination of liability under this part without regard to the employer's net worth.

Under the proposed regulation, an employer asserting the net worth limitation must submit certain financial information to PBGC (proposed § 2613.6, so that PBGC can determine net worth. The PBGC's determination of net worth will be based on an analysis of the factors set forth in proposed § 2613.4. When the PBGC has determined the employer's liability, it will notify the employer of that determination; the determination may be appealed by the employer under Part 2618 of the PBGC's regulations (proposed § 2613.9). Finally, at any point in this process, the employer may apply for deferred payment terms pursuant to proposed § 2613.8.

The Proposed Regulation

Scope

Pursuant to proposed § 2613.1, the rules set forth in this proposed regulation apply to the termination of any single employer pension plan covered under Title IV of the Act occurring on or after the effective date of the regulation. In addition, many of the rules are also applicable to cases arising on or after the effective date of the regulation under §§ 4063 and 4064, which apply to plans to which more than one employer contributes. Both of those sections use as a starting point for the calculation of liability the liability that would be computed under § 4062 if that section were applicable. Accordingly, the PBGC believes it is appropriate to use the same rules for

determining employer net worth (set forth in proposed § 2613.4) in § 4063 and § 4064 cases as in § 4062 cases. Similarly, the rules for setting the valuation date (set forth in proposed § 2613.5) would be equally applicable to cases under §§ 4063 and 4064. Of course, in a § 4063 case, there is no date of plan termination; the analogous date is the date of the substantial employer's withdrawal from the plan.

Since § 4063 or § 4064 liability is different from § 4062 liability and more complicated to determine, PBGC proposes that proposed § 2613.3, which sets forth the employer's liability under this regulation and the time for payment of it, would not be applicable to cases under §§ 4063 and 4064. Similarly, the time limit for submitting net worth data contained in proposed § 2613.6(a) would also not apply to cases under §§ 4063 and 4064. However, the net worth information listed in § 2613.6 would normally be pertinent to those cases, and the PBGC will generally request its submission.

Again, since proposed § 2613.3 would not apply to §§ 4063 and 4064 cases, much of proposed § 2613.7 dealing with interest on unpaid employer liability and on overpayments of employer liability would not be germane to those cases. However, the PBGC believes that it would be appropriate to use the same interest rate for late or deferred payments under §§ 4063 and 4064 as under § 4062, and therefore proposes to make Paragraph (c) of § 2613.7 applicable to cases covered under those sections.

The PBGC also believes that it is appropriate to use the same standards for granting deferred payment terms in all employer liability cases, and accordingly, it is proposed that proposed § 2613.8 of this regulation apply to cases arising under §§ 4063 and 4064.

Section 4068 of the Act, which establishes PBGC's lien in the case of non-payment of employer liability, applies to employer liability under §§ 4062, 4063 and 4064. It follows, in PBGS's view, that proposed § 2613.9 of the regulation dealing with the lien should apply to all such cases; the proposed regulation so provides. However, it should be kept in mind that the lien only arises upon the neglect or refusal to pay the liability after demand by PBGC, and not all cases under § 4063 will result in PBGC's demanding payment of the liability; PBGC may accept an indemnification agreement instead. In those situations, then, proposed § 2613.9 would be inapplicable.

Finally, while under this proposal the various provisions relating to the time for payment of employer liability, assertion of the net worth limitation, and submission of net worth information would not apply to cases under §§ 4063 and 4064, the PBGC would rely on these rules for guidance in establishing appropriate time limits for § 4063 and § 4064 liability proceedings.

PBGC proposes that this regulation would be applicable with respect to terminations and withdrawals occurring more than 30 days after publication of the final regulation in the **Federal Register**. As a practical matter, this means that many of the procedural aspects, including the various time limits, of the regulation would not apply with respect to plans that terminate before that time, although, of course, the several statutory provisions that are interpreted and implemented by this regulation have been in effect since September 2, 1974, the date of the enactment of ERISA, and apply to terminations on or after that date. Of particular note in this regard is the fact that § 4068 of the Act provides for the assessment of interest on unpaid employer liability from the date of plan termination.

The PBGC is aware that heretofore there has been uncertainty in the minds of plan sponsors with respect to the rules and procedures for the calculation and payment of employer liability. Because of this uncertainty, the PBGC has often foregone collection of interest on unpaid employer liability from the date of termination until after PBGC has given a plan sponsor specific advice as to the amount of and rules for payment of its employer liability.

However, the publication of this regulation in final form will provide that same guidance to plan sponsors whose plans have already terminated; *i.e.*, it will advise them of how the § 4062 liability is determined and of the consequences of late or non-payment of employer liability imposed by the Act. Accordingly, the PBGC believes it is appropriate with respect to plans that terminate prior to the effective date of this regulation, to give plan sponsors a reasonable period of time (30 to 45 days) after publication of the regulation to calculate and pay their employer liability, using the regulation for guidance, without the imposition of interest; failure to pay within the time allowed will result in the imposition of interest on the unpaid liability accruing from the expiration of the 30 or 45 day payment period. The PBGC will send a written notice to the affected plan sponsors advising them of this procedure and providing them with a copy of the final regulation. (Plan sponsors who have already received employer liability request or demand letters prior to final publication of this regulation will be given the period of time specified in their letters within which to pay their liability without the assessment of interest.)

Definitions

An "employer" is defined in proposed § 2613.2 as a trade or business maintaining a plan at termination and all trades or businesses (whether or not incorporated) under common control with that business. Most frequently, an employer will be a corporation, partnership or sole proprietorship, although other entities, such as trusts or joint ventures, would also be included. Further, the definition includes not-for-profit organizations as well. All trades or businesses (whether or not incorporated) under common control are considered to be one "employer" for purposes of Title IV of the Act. Thus, if a terminating plan is maintained by one or more members of a controlled group, the entire group is the "employer" and thus responsible for any employer liability.

As noted above, § 4062(c)(1) of the Act provides that the PBGC may determine net worth on "whatever basis *best* reflects, in the determination of the corporation, the *current status* of the employer's operations and prospects . . . ." (emphasis supplied). To accountants, "net worth" may suggest "book value," as shown on a balance sheet. However, book value represents the depreciated cost of net assets and does not necessarily indicate the company's realizable asset value; nor does it measure the company's earning potential. Thus, book values, in the accounting sense, are not always an accurate reflection of the actual value of an ongoing business. Therefore, under the proposed regulation, "net worth" is defined as the fair market value of the employer's business. This valuation takes into account all of the circumstances affecting the financial status of a business, including book value, in order to establish a net worth figure that represents the current status and future prospects of the business.

Use of fair market value as the measure of employer net worth is in accord with Congressional intent underlying § 4062. In imposing employer liability up to 30% of the employer's net worth, Congress made a judgment that each employer terminating an insufficient pension plan would be required to reimburse PBGC for the guaranteed benefits under the pension plan that PBGC pays, if the employer's operations could sustain that expense. In general, a business is worth what it

can reasonably be expected to earn, giving due account to its anticipated expenses. Thus, fair market value measures an ongoing company's capacity to generate earnings and, consequently, its capacity to acquire funds to pay its liability under § 4062. Of course, in the case of a company facing liquidation, this capacity is very limited, and the fair market value would reflect that.

Amount of Employer Liability

As noted above, under proposed § 2613.3, the amount of an employer's liability is generally equal to the plan asset insufficiency, unless the employer notifies PBGC that 30% of its net worth is less than the PAI, the employer demonstrates that its net worth is limiting, and the PBGC determines that this is so. If these conditions are met, the liability is equal to 30% of the employer's net worth.

Pursuant to proposed § 2613.3(b), an employer must notify PBGC that it believes its liability is limited by its net worth within 30 days after the establishment of the date of plan termination. Pursuant to § 4042 of the Act, the plan termination date may be established either in an agreement between the PBGC and the plan administrator or by court order. In the former situation, the date is "established" on the date the agreement is signed by the last party to sign it, and in the latter case, the date is established on the date the court order is issued. Since either of these dates will occur some time after submission of the notice of intent to terminate the plan, this 30-day rule should give employers adequate time to determine whether they wish to assert the net worth limitation. It is important to remember in this connection that the employer need not be prepared to submit its calculations of its net worth at this time. Rather, the employer's calculation of its net worth showing that 30% thereof is less than the PAI need not be submitted until 120 days after the establishment of the date of plan termination (proposed § 2613.6(a)).

If the employer fails to make a timely assertion of the net worth limitation or a timely demonstration that its net worth does limit its liability, the PBGC will proceed to compute the employer's liability under this part without regard to the employer's net worth; the PBGC will not calculate the employer's net worth in reaching its determination under this part (proposed § 2613.3(c)). It is noted, however, that an employer may appeal the liability determination under this part (proposed § 2613.9 and Part 2618 of this chapter) and in so doing, may assert and attempt to demonstrate the net worth limitation. (It should be kept in mind in this regard, that the time limit for taking an appeal under Part 2618 is generally shorter than the time allowed under this part for demonstrating the net worth limitation.) If, in the course of the appeal, the employer demonstrates in accordance with proposed § 2613.6(a)(1) that its net worth does limit its liability, the PBGC will then determine the employer's net worth.

Determination of Net Worth

Under the proposal, the net worth of the employer is its fair market value, as determined by PBGC, as of the net worth record date (proposed § 2613.4(a)). The net worth record date will normally be the date of plan termination. (This is explained more fully in the next section.) The PBGC will determine the fair market value based on the facts and circumstances of the particular case, including any information submitted by the employer as probative of its fair market value. The various factors PBGC will consider in reaching its determination are set forth in proposed § 2613.4(b). These factors are quite broad and, of course, not all of them will be relevant in every case.

In some cases, one factor may provide a better measure of the fair market value of one part of the employer (*e.g.* a separate facility, a division, etc.), while another factor would provide a better valuation of a different part of the employer. When this situation exists, PBGC may use different factors to value different parts of the employer. The final result, however, is one figure—the fair market value of the employer—that reflects the impacts of each of the constituent parts on the value of the whole.

For example, a liable employer may be two corporations, a parent and a subsidiary. PBGC may determine that because the subsidiary is in the process of ceasing operations, the fair market value of the subsidiary is its appraised liquidating value. On the other hand, the fair market value of the parent, a going concern, might be based on several of the other factors, including a bona fide offer to purchase, its current financial condition, its price/earnings ratio, and its prior business history. The final result, the net worth of the employer, would reflect the impact, if any, of the liquidation of the subsidiary on the fair market value of the parent.

PBGC has attempted to list specifically all the common factors that might be pertinent, but their relevancy in any one situation is a matter of judgment. A sale of an employer's business, or agreement to sell, would generally be strong evidence of fair market value, unless other evidence suggests the transaction was not at arm's length. A sale price would not be conclusive evidence. Bona fide offers to purchase would suggest a minimum value; offers by an employer to sell would ordinarily suggest a maximum value. The sale of stock or of a partnership interest would be evaluated similarly. In determining whether the sale or offer price is an accurate reflection of employer net worth, PBGC will consider whether the stock was traded on a recognized exchange, the relative size of the interest in the business sold, and the existence of a change in control or other event which would have an impact on the price.

As reflected in the proposed rule, any of these transactions occurring on or about (including after) the net worth record date will be considered by the PBGC. Generally, transactions occurring closer to the net worth record date will be given greater probative value than more remote transactions.

Other data that PBGC will examine include projections of future earnings; prior business history; current financial condition; earnings and dividend prospects as viewed by management (subject to evaluation of objectivity); economic outlook for the industry; market prices of stocks and price/earnings ratios of stocks of similar firms; research and development activities; value of employer goodwill or other intangibles; replacement cost of assets such as land, buildings or equipment; and employer book value. Each factor is generally indicative of the employer's financial status, and would be considered by either a prospective buyer or an employer who intends to sell his business. Since these factors would affect and reflect the fair market value of an on-going business, PBGC will evaluate them in determining an employer's net worth.

Two other factors are important to mention. First, in a failing or failed business, the liquidating value of the employer may be a more accurate reflection of the employer's net worth, and the PBGC will consider this. Second, in the case of an employer that recently underwent or is currently in a reorganization proceeding under Chapter 11 of the Bankruptcy Code of 1978 (or under Chapter XI of the prior Bankruptcy Act), the plan or reorganization may provide a good indication of the debtor's and, perhaps, the creditor's estimate of the value of the business. Specifically, provisions for stockholders and other equity holders

will often reflect the assumed equity of the employer. In these cases, this may be the most accurate measure of fair market value. Thus, the PBGC will consider plans of reorganization, whether or not confirmed, although plans that have not yet been or were not confirmed would generally be accorded less probative value.

Under the proposed regulation, the valuation of partnerships or sole proprietorships would be based on the same set of factors (discussed above) used to value a corporate employer. Thus, in determining the net worth of a partnership or sole proprietorship that maintained a plan, PBGC would include any other trade or business (whether or not incorporated) which is under common control with the plan sponsor through the ownership interest of the sole proprietor of one or more of the general partners. The valuation would not, however, look to the personal assets and liabilities of a sole proprietor or partner. On the other hand, it is contemplated that any liability assessed under this part would extend to the personal, non-business, assets of a sole proprietor or general partner. Nonetheless, there may be circumstances in which it would also be appropriate, in valuing the net worth of a partnership or sole proprietorship, to include the personal assets and liabilities of the general partners or sole proprietor, even though such assets and liabilities are unrelated to a commonly controlled trade or business. For this reason, the PBGC is especially interested in receiving public comment on what circumstances might warrant consideration, for valuation purposes, of such personal assets and liabilities.

Finally, the net worth of the employer would also include the value of any assets transferred by the employer that the PBGC finds were improperly transferred under the circumstances (proposed § 2613.4(c)). The proposed regulation in this regard does little more than incorporate the statutory language, and the PBGC specifically requests public comment on how to implement this provision. The legislative history of this provision indicates that Congress was concerned with preventing employers from avoiding or limiting their liability for an underfunded plan by transferring assets out of the business in contemplation of plan termination. An example of this would be a closely-held corporation declaring large dividends in advance of plan termination. Moreover, the fact that § 4062(c) specifically refers to transfers that would be improper under the Bankruptcy Act indicates that Congress was concerned with a wide range of transactions that could in some way be considered fraudulent as against a creditor, the PBGC. The PBGC is particulary interested in suggestions with respect to the specific types of transfers to be covered by this provision, or whether the "improper transfers" should be broadly defined, and with respect to how the PBGC might detect the "improper transfers" (*e.g.*, required reporting of certain transfers as part of the net worth information submitted by an employer under this regulation).

Net Worth Record Date

The net worth record date is the valuation date under the regulation, and normally it will be the date of plan termination (proposed § 2613.5(a)). However, under proposed § 2613.5, the PBGC would retain authority to establish a net worth record date at an earlier date up to 120 days prior to the date of plan termination. the PBGC does not expect that it will need to exercise this power frequently. Generally, this authority would be exercised when necessary to prevent abuses of the plan termination insurance system. Under this proposal, PBGC can establish an earlier net worth record date at any time during the employer liability proceeding, but usually it would do so after the review of the employer net worth information submitted pursuant to proposed § 2613.6(a).

Whenever the PBGC determines that it should establish an earlier net worth record date, it will immediatly so notify the employer (proposed § 2613.5(b)). Thus, unless and until an employer receives a notice from PBGC that it has established an earlier net worth record date, the employer may assume that the net worth record date is the date of plan termination.

In addition, when PBGC sets an earlier net worth record date and the employer has already submitted net worth information pursuant to proposed § 2613.6(a), PBGC's notice to the employer may also include a request for additional net worth information pursuant to proposed § 2613.6(b). Generally, the request would be for the same kinds of information already submitted pursuant to § 2613.6(a), but as of a date nearer to the new net worth record date. (This is discussed more fully in the next section.)

Submission of Net Worth Information

Proposed § 2613.6 sets forth the information that each employer asserting the net worth limitation must submit. In addition, employers may submit any other information they consider pertinent. The information must be submitted within 120 days after the establishment of the date of plan termination, although PBGC reserves the right to require the submission of the information earlier in specific cases. It is not expected that PBGC will need to exercise this authority frequently.

The information required includes a statement of net worth prepared by the employer in accordance with proposed § 2613.4. This should include a brief discussion of the factual and methodological justifications for the valuation, and it will provide a starting point for PBGC's analysis. Failure to submit this will result in PBGC computing the employer liability under this part without regard to the employer's net worth (proposed § 2613.3(c)).

Some of the specific information called for under proposed § 2613.6(a) (*e.g.* appraisals of the employer's assets) is requested as of a date "on or about the net worth record date." Of course, employers will not always have the required data as of the net worth record date, and thus what is required under this section is that they submit the data they have as of the closes date to (either before or after) the net worth record date. As a general proposition, information as of a date on or near the net worth record date is more likely to give an accurate indication of fair market value on the net worth record date than information as of a more remote date. PBGC will evaluate the information submitted accordingly (proposed § 2613.6(c)).

Because PBGC wants valuation data as close to the net worth record date as possible, when it exercises its authority to establish an earlier net worth record date after the employer has submitted the net worth information, PBGC will often request the submission of new data as of a date closer to the new net worth record date. Obviously, if the employer does not have any net worth information other than that already submitted, it cannot comply with the request; but the PBGC may give less weight to the information previously submitted since it is more remote from the new net worth record date.

Finally, the PBGC may in any case request additional information to assist it in determining net worth (proposed § 2613.6(b)).

Interest on Employer Liability and Refunds

Under the proposed rule, interest on unpaid employer liability runs from the date of plan termination. This is consistent with § 4068 of the Act, pursuant to which a lien for the amount

of the employer liability, including interest, arises on that date. In addition, in order to encourage employers to pay their full liability by the date of plan termination, the PBGC will pay interest on any overpayments by employers. Interest on overpayments will accrue from the later of (1) the date of the overpayment or (2) 10 days prior to the date of plan termination, until the date of the refund by PBGC (proposed § 2613.7(b)). In other words, if an employer pays its liability simultaneously with the filing of the Notice of Intent to Terminate (which is due 10 days before the proposed termination date) or subsequent thereto, PBGC will pay interest on any overpayment from the date of the payment. However, in order to avoid creating a situation where employers might use PBGC as a short-term investment vehicle, if an overpayment of employer liability is made more than 10 days prior to the date of plan termination, PBGC will not pay interest from the date of the overpayment; in this case, interest would accrue from the 10th day prior to the termination date.

Under proposed § 2613.7, the interest rate for both unpaid employer liability and refunds of overpayments will be the interest rate charged and paid by the Internal Revenue Service for late payment and overpayment of taxes. This is the interest rate established under § 6621 of the Internal Revenue Code of 1954, as amended. The rate so established is currently 12% per annum. The Secretary of the Treasury may adjust this rate pursuant to § 6621(b), but not more often than once every two years. The current rate was set by the Secretary effective February 1, 1980. The PBGC proposes that the interest rate charged under this part will change concurrently with any change in the IRS rate, and will become immediately effective with respect to any liabilities then outstanding, including those that arose prior to the change in the interest rate. The new rate would be effective, however, on a prospective basis only.

The rate prescribed by proposed § 2613.7(c) will apply to deferred payment of employer liability under proposed § 2613.8, as well. If the interest rate changes during the deferral period, the new rate is applicable to that portion of the principal liability unpaid as of the date of the interest rate change.

Finally, proposed § 2613.7 provides that the interest rate assessed on employer liability will be the same for all employers regardless of an employer's financial condition. The reason for this is that an interest rate that is variable among classes of employers would require that sound employers be offered a lower rate and weak employers be offered a higher rate. This result would conflict with two important objectives: (1) for healthy employers, the interest rate would not be high enough to discourage such employers from using PBGC financing; and (2) for employers suffering financial hardship, the higher interest rate might be an undue burden.

Deferred Employer Liability Payments

Deferred payment terms may be granted at PBGC's discretion (proposed § 2613.8). Deferred payment terms must be requested in writing, and an employer may make its request at any time during the termination process. The PBGC will grant deferred payment terms only when necessary to avoid severe hardship and only when there is a reasonable probability that the employer will be able to pay its full liability in accordance with the repayment terms.

The existence of severe business hardship cannot be defined according to a predetermined formula that can be applied in every case. Each application for deferral must necessarily be evaluated on its merits. However, certain factors stated in proposed § 2613.8(c) will be utilized as guidelines. One important factor will be the percentage of employer net worth that the liability represents. An employer whose liability is fully 30% of its net worth will likely be eligible for deferred payment terms. As the ratio of the liability to the net worth decreases, the hardship on the employer that full payment would create would probably also decrease, and thus the granting of deferred payment would become less likely. Other criteria for measuring hardship are the employer's overall financial condition and its cash flow.

The PBGC does not believe it would be appropriate for it to become a major source of financing for employers through its granting of deferred payment terms. Accordingly, it is contemplated that in most cases the deferral period will be relatively short. Specifically, the payment terms would typically call for monthly or quarterly installment payments based on a 10-year repayment period, but with a balloon payment for the entire unpaid balance at the end of the third year. If the employer advised PBGC during the third year that it would be unable to make the balloon payment, the PBGC would re-negotiate the payment terms if it found that compliance with the original terms would cause the employer severe hardship.

Finally, the PBGC may, as a condition of granting deferred payment terms, require the employer to provide security for its liability. The PBGC recognizes, however, that in may cases when the employer meets the hardship standard for deferred payment, the employer will not be able to provide security.

Lien

When PBGC has calculated the PAI, or, when necessary, completed its net worth determination, PBGC will inform the employer of PBGC's initial determination of the employer's liability and request payment, if any is owed. The employer may appeal the determination and obtain review by PBGC under the PBGC Rules for Administrative Review of Agency Decisions, Part 2618 of this chapter. When PBGC has completed its review, it will issue a final decision. Simultaneously with any decision finding liability, PBGC will issue a demand letter for payment of the employer liability. If the employer fails to pay the liability by the date specified in the demand letter, then a lien will arise, as of the date of plan termination, against all the employer's assets for the unpaid amount of the employer liability, plus interest, from the date of plan termination.

In consideration of the foregoing, it is proposed to amend Chapter XXVI of Title 29, Code of Federal Regulations, by adding a new Part 2613 to read as follows:

PART 2613—EMPLOYER LIABILITY FOR A SINGLE EMPLOYER PLAN TERMINATION

Sec.

2613.1 Purpose and scope.
2613.2 Definitions.
2613.3 Imposition and amount of employer liability.
2613.4 Determination of net worth.
2613.5 Net worth record date.
2613.6 Submission of net worth information.
2613.7 Interest on employer liability and refunds of overpayments.
2613.8 Deferred payment of employer liability.
2613.9 Notification of and lien for employer liability.
2613.10 Filing of documents.
2613.11 Computation of time.

Authority: Sections 4002(b)(3), 4062, 4063, 4064, 4067 and 4068, Pub. L. 93–406, 88 Stat. 1004, 1029, 1030, 1031, 1032 (29 U.S.C. §§ 1302(b)(3), 1362, 1363, 1364, 1367, 1368).

§ 2613.1 Purpose and scope.

Section 4062 of the Act imposes liability on an employer for the termination of an insufficient (*i.e.* lacking sufficient assets to pay guaranteed benefits) single employer

pension plan. Section 4063 of the Act imposes liability for the withdrawal of a substantial employer from an insufficient pension plan to which more than one employer contributes. Section 4064 imposes termination liability on all employers who contributed within 5 years prior to plan termination to an insufficient plan to which more than one employer contributes.[1] Under both § 4063 and § 4064, liability is determined by first calculating what the liability would be under § 4062 if that section were applicable to the plan in question, and then prorating or allocating that liability among the affected employers. Section 4067 of the Act authorizes PBGC to grant deferred payment terms to employers liable under §§ 4062, 4063 or 4064, and 4068 gives the PBGC a lien on the employer's assets in the event of non-payment of the liability imposed by §§ 4062, 4063 or 4064. The purpose of this part is to set forth the rules for determining and paying employer liability under § 4062. Thus, this part applies to the termination of any single employer plan covered under § 4021(a) of the Act and, to the extent appropriate, to substantial employer withdrawals from and terminations of plans covered under § 4021(a) of the Act to which more than one employer contributes. This part also contains rules relating to deferred payments of employer liability under § 4067 and to the PBGC's lien under § 4068, and these rules apply to all terminations covered under either §§ 4062 or 4064 and, to the extent appropriate, to substantial employer withdrawals under § 4063.

§ 2613.2 Definitions.

For the purposes of this part (unless otherwise required by the context):

"Act" means the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 *et seq.* (1976)).

"Date of plan termination" means the date established under § 4048 of the Act.

"Employer" means the trade or business (whether or not incorporated) maintaining the plan and all trades or businesses (whether or not incorporated) under common control, within the meaning of Part 2612 of this chapter, with such trade or business.

"Net worth" means the fair market value of an employer, as determined by the PBGC pursuant to this part.

"Net worth record date" means the date as of which the PBGC determines the net worth of an employer.

"Plan asset insufficiency" means the amount, calculated as of the date of plan termination, by which the value of a plan's benefits guaranteed by the PBGC under § 4022 of the Act exceeds the value of the plan's assets allocable to such benefits under § 4044 of the Act.

"Plan year" means the fiscal year on which the records of a plan are kept.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Single employer plan" means a defined benefit pension plan described in § 4021(a) of the Act that is maintained by one trade or business (whether or not incorporated) or by more than one trade or business (whether or not incorporated) all of which are under common control within the meaning of Part 2612 of this chapter.

"Title IV" means Title IV of the Act.

§ 2613.3 Imposition and amount of employer liability.

(a) *Amount of employer liability.* An employer who maintains a terminating single employer plan is liable to the PBGC as of the date of plan termination in the amount of any plan asset insufficiency, as determined by the PBGC, unless—

(1) Thirty percent (30%) of the employer's net worth, determined in accordance with this part, is less than the plan asset insufficiency;

(2) The employer notifies the PBGC, in accordance with Paragraph (b) of this section, that 30% of its net worth is less than the plan asset insufficiency; and

(3) The employer demonstrates, in accordance with § 2613.6(a)(1), that 30% of its net worth is less than the plan asset insufficiency.

If these three conditions are satisfied, the employer is liable to PBGC as of the date of plan termination in the amount of 30% of its net worth, as determined by the PBGC.

(b) *Notice of net worth limitation.* An employer who believes that 30% of its net worth is less than the plan asset insufficiency shall so notify the PBGC in writing within 30 days after the establishment of the date of plan termination.

(c) *Failure to notify PBGC of or to demonstrate net worth limitation.* If an employer fails to submit a timely notice in accordance with Paragraph (b) of this section, or to demonstrate in accordance with § 2613.6(a)(1) that its liability is limited by its net worth, the PBGC will compute and assess liability under this part without regard to the net worth of the employer.

§ 2613.4 Determination of net worth.

(a) *General rule.* An employer's net worth is equal to the fair market value of the employer determined at the discretion of the PBGC, as of the net worth record date established pursuant to § 2613.5, and includes those assets that PBGC determines pursuant to Paragraph (c) of this section to have been improperly transferred. The PBGC's determination will be based on its review and analysis of the factors set forth in Paragraph (b) of this section.

(b) *Factors for determining net worth.* In determining an employer's net worth, the PBGC will consider the factors set forth below as they pertain to the employer; different factors may be considered with respect to different portions of the employers' operations.

(1) A bona fide sale of, agreement to sell, or offer to purchase or sell the business of the employer made on or about the net worth record date.

(2) A bona fide sale of, agreement to sell, or offer to purchase or sell stock or a partnership interest in the employer, made on or about the net worth record date.

(3) If stock in the employer is publicly traded, the price of such stock on or about the net record date.

(4) The price/earnings ratios and prices of stocks of similar trades or businesses on or about the net worth record date.

(5) The employer's economic outlook, as reflected by its earnings and dividend projections, current financial condition, and business history.

(6) The economic outlook for the employer's industry.

(7) The appraised value, including the liquidating value, of the employer's fixed and intangible assets.

(8) The value of the equity assumed in a plan of reorganization of an employer in a proceeding under Chapter 11 of the Bankruptcy Code of 1978 (or under Chapter XI of the prior Bankruptcy Act).

(9) Any other factor PBGC finds to be relevant in determining the employer's net worth.

(c) *Improper Transfers.* An employer's net worth shall include the value of any assets transferred by the employer which the PBGC determines to have been improperly transferred under the circumstances.

§ 2613.5 Net worth record date.

(a) *General.* Unless the PBGC establishes an earlier net worth record date pursuant to Paragraph (b) of this section, the net worth record date is, for all purposes under this part, the date of plan termination established pursuant to § 4048 of the Act.

[1] The liabilities under §§ 4063 and 4064 are related. Under the prior section, if the plan does not terminate within 5 years after the withdrawal of the employer, the withdrawal liability is abated. If there is a plan termination within that period, the withdrawn employer's liability under § 4064 is offset by the amount of liability paid under § 4063.

(b) *Establishment of an earlier net worth record date.* Notwithstanding Paragraph (a) of this section, the PBGC may in case establish an earlier date as the net worth record date, but in no event may that date be more than 120 days prior to the date of plan termination. The PBGC may exercise its authority under this paragraph at any time during a termination proceeding, although it will usually do so, if at all, after PBGC staff have reviewed the information submitted pursuant to § 2613.6(a).

(c) *Notification to the employer.* Whenever the PBGC does establish an earlier net worth record date, it shall immediately give the employer written notification of that fact. The written notice may also include a request for more information pursuant to § 2613.6(b).

§ 2613.6 Submission of net worth information.

(a) *General.* An employer who has notified the PBGC pursuant to § 2613.3(b) that thirty percent (30%) of its net worth is less than the plan asset insufficiency shall submit the following information to the PBGC within 120 days after the establishment of the date of plan termination. The PBGC reserves the right in any case to require the submission of the information within a shorter period after the establishment of the date of plan termination.

(1) The employer's estimate, made in accordance with § 2613.4, of its net worth on the net worth record date and a statement of the basis for the estimate.

(2) A copy of the employer's audited (or if not available, unaudited) financial statements for the five (5) full fiscal years plus any partial fiscal year preceding the net worth record date. The statements must include balance sheets, income statements, statements of changes in financial position, and annual reports.

(3) A statement of all sales and copies of all offers or agreements to buy or sell at least 25% of employer assets or at least 5% of employer stock or partnership interest, made on or about the net worth record date.

(4) A statement of the employer's current financial condition and business history.

(5) A statement of the employer's business plans, including projected earnings and, if available, dividend projections.

(6) Any appraisals of the employer's fixed and intangible assets made on or about the net worth record date.

(7) A copy of any plan or reorganization, whether or not confirmed, with respect to a proceeding under Chapter 11 of the Bankruptcy Code of 1978 (or under Chapter XI of the prior Bankruptcy Act) involving the employer and occurring within five (5) calendar years prior to or any time after the net worth record date.

(b) *Additional information.* Whenever the PBGC establishes a net worth record date earlier than the date of plan termination and the employer has already submitted the information specified in Paragraph (a) of this section, the PBGC may require the employer to submit additional information like that described in Paragraph (a), as of a date closer to the net worth record date than the information already submitted pursuant to Paragraph (a). In addition, the PBGC may require the submission by the employer of any other informtion the PBGC determines it needs to calculate the employer's net worth.

(c) *Failure or inability to submit information.* If an employer fails or is unable to submit all of the information required or requested under this section (other than that required by Paragraph (a)(1) of this section), the PBGC shall determine the employer's net worth on the basis of the information that was submitted, as well as any other pertinent information the PBGC may have. In general, when the information submitted is as of a date further removed from the net worth record date, it will be given less probative value by PBGC then would be given to information as of a date nearer to the net worth record date. As provided in § 2613.3(c), if the employer fails to submit the information required by Paragraph (a)(1) of this section, the PBGC shall compute the employer liability under this part without regard to the employer's net worth.

§ 2613.7 Interest on employer liability and refunds of overpayments.

(a) *Interest on employer liability.* If an employer fails to pay its full liability under this part on or before the date of plan termination, and whether or not the PBGC has granted the employer deferred payment terms pursuant to § 2613.8, interest on the unpaid principal portion of the liability will accrue at the rate set forth in Paragraph (c) of this section from the date of plan termination until the liability is paid in full.

(b) *Refunds of employer liability.* If an employer pays the PBGC an amount that exceeds the employer's full liability under this part (including any interest owed pursuant to Paragraph (a) of this section), the PBGC shall refund the excess amount to the employer, with interest on that amount at the rate set forth in Paragraph (c) of this section. Interest on the overpayment will accrue from the later of the date of the overpayment or 10 days prior to the date of plan termination, until the date of refund.

(c) *Interest rate.* The interest rate on employer liability and refunds of employer liability shall be at the rate prescribed in § 6621(a) of the Internal Revenue Code of 1954, as amended, or at the adjusted rate prescribed by the Secretary of the Treasury pursuant to § 6621(b) if one is so prescribed. The interest under this part shall be a variable rate, changing whenever the interest rate under § 6621 of the Code changes.

§ 2613.8 Deferred payment of employer liability.

(a) *General.* PBGC may, in its discretion and at the request of an employer, grant deferred payment terms for employer liability. PBGC will grant deferred payment terms only when necessary to avoid the imposition of a severe hardship on the employer, and only when there is a reasonable possibility that the employer will be able to meet the deferred payment terms and pay the entire liabilty.

(b) *Request for deferred payment terms.* An employer may request deferred payment terms at any time. The request shall be in writing and include the information specified in § 2613.6(a) unless that information has already been submitted to the PBGC.

(c) *Criteria.* PBGC shall examine the following factors in determining what, if any, deferred payment terms it will grant an employer:

(1) The ratio of employer liability to the employer's net worth.

(2) The employer's overall financial condition, including—

(i) The amounts and terms of the employer's existing debts;

(ii) The amount and availability of the employer's liquid assets;

(iii) The employer's current and past cash flow; and

(iv) The employer's projected cash flow, including a projection of the impact on the employer's operations that would be caused by the immediate full payment of employer liability.

(3) The availability of credit to the employer from private sector sources.

(d) *Security during period of deferred payment.* As a condition to the granting of deferred payment terms, PBGC may, in its discretion, require that an employer provide PBGC with such security for its obligations as the PBGC deems adequate.

§ 2613.9 Notification of and lien for employer liability.

(a) *Notification of liability.* Except as provided in Paragraph (c) of this section, when the PBGC has determined the amount of an employer's liability under this part, it shall notify the employer in writing of the amount of the liability. The notification will include a request for payment of the liability and a statement of the employer's right to appeal the assessment of liability pursuant to Part 2618 of this chapter.

(b) *Demand for liability.* If the employer fails to pay its liability within the time specified in the notification of liability described in Paragraph (a) of this section, the PBGC will issue a demand letter for the liability—

(1) if no appeal is filed, upon the expiration of time to file an appeal under Part 2618; or

(2) if an apeal is filed, upon issuance of a decision on the appeal finding that there is liability under this part.

(c) *Special rule.* Notwithstanding Paragraphs (a) and (b) of this section, the PBGC may, in its discretion, issue a demand letter for an employer's liability under this part immediately upon determining the liability, without first issuing a notification of liability pursuant to Paragraph (a) of this section.

(d) *Lien.* If the employer fails or refuses to pay the full amount of its liability within the time specified in the demand letter, the PBGC shall have a lien in the amount of the liability, including interest, arising as of the date of the plan termination, on all of the property and rights to property belonging to the employer.

§ 2613.10 Filing of documents.

(a) *Date of filing.* Any document required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC.

If the conditions stated in both (1) and (2) are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Payments of employer liability shall be sent to the Division of the Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. Any document required or permitted to be filed under this part, except for documents relating to appeals, shall be submitted to the Office of Program Operations, Pension Benefit Guaranty Corporation, at the above address. Any document submitted pursuant to Part 2618 in connection with an appeal of an initial determination shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, at the above address.

§ 2613.11 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday.

Issued in Washington, D.C. this 20th day of May, 1980.

Ray Marshall,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this Notice of Proposed Rulemaking.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 80-15928 Filed 5-22-80; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Chapter VII

Notice of Public Hearing and Public Comment Period on the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Proposed rule: Comment Period and Public Hearing on Missouri Permanent Program Submission.

SUMMARY: OSM is announcing procedures for the public comment period and hearing on the substance of the proposed Missouri regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This notice sets forth the times and locations that the Missouri program is available for public inspection; additions or modifications to the submission made since February 1, 1980; the date when and the location where OSM will hold a public hearing on the submission; the comment period during which interested persons may submit written comments and data on the proposed program and other information relevant to public participation during the comment period and public hearing.

DATES: A public hearing to review the substance of the Missouri program submission will be held from 4:00 p.m. to 7:00 p.m. on June 23, 1980, at the address listed below.

Written comments, data or other relevant information may be submitted as a supplement to, or in lieu of, an oral presentation at the hearing. Comments from the public must be received on or before 4:30 p.m., July 1, 1980, to be considered in the Secretary of the Interior's decision on the proposed Missouri regulatory program.

ADDRESSES: The public hearing will be held at the Federal Building, Room 140, 601 East 12th Street, Kansas City, Missouri 64106. Written comments should be sent to:

Raymond L. Lowrie, Regional Director, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

or may be hand delivered to the Regional Office.

A listing of scheduled public meetings and copies of all written comments are available for review and copying at the OSM Region IV Office and the Missouri Land Reclamation Commission office listed below, Monday through Friday, 8:00 a.m., to 4:00 p.m., excluding holidays:

Office of Surface Mining, Reclamation and Enforcement, Region IV, 5th Floor Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

Missouri Land Reclamation Commission, 1026-D., N.E. Drive, Jefferson City, Missouri 65101.

Copies of the full text of the proposed program are available for inspection during regular business hours at the OSM Region IV Office and the Missouri Land Reclamation Commission listed above, and the OSM Headquarters Office, listed below:

U.S. Department of the Interior, Office of Surface Mining, Interior South Building, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, Office of Surface Mining, Reclamation and Enforcement, Scarritt Bldg., 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374-3920.

SUPPLEMENTARY INFORMATION: On February 1, 1980, the State of Missouri submitted to OSM a proposed state regulatory program. Pursuant to the provisions of 30 CFR Part 732 (44 FR 15326–15328, March 13, 1979), the Regional Director published notification of receipt of the program submission in the February 11, 1980, **Federal Register** (45 FR 9123–9124) and in newspapers of general circulation in Missouri. In accordance with that announcement public comments were solicited and a public meeting was held on March 13, 1980, on the issue of the program's completeness.

On March 24, 1980, the Regional Director published a notice announcing that he had determined the program to be complete, **Federal Register** (45 FR 18987). This determination of completeness was not a determination of whether the submitted materials complied with the substantive provisions of SMCRA and the Permaent Regulatory Program.

On May 14, 1980, the Missouri Land Reclamation Commission submitted to OSM numerous revisions to the Missouri permanent program submission. Revisions were made to the Missouri Surface Coal Mining Law, the surface coal mining regulations, the section-by-section analysis of both the Act and regulations, and the program narrative.

A number of the revisions were minor in nature such as corrections of typographical errors, incorrect references to section numbers in the Act and regulations, dropped lines, and other items of clarification. These minor modifications will not be discussed or summarized in this notice. However, the significant modifications to the Act and proposals for modifying the regulations will be summarized below as required by 30 CFR 732.12(a)(1). Public comments are invited on these revisions.

ACT

(1) Section 444.570 of the Missouri Act was amended to allow operators to submit personal bonds secured by a certificate of deposit in lieu of a surety bond for the purpose of insuring adequate reclamation.

(2) Section 444.820 of the Missouri Act was amended to allow mining permits to expire on the anniversary date of issuance rather than January 1 of each year.

Regulations

(1) Missouri deleted a provision found at 10 CSR 40–3.040 that granted a variance for stream channel restoration.

(2) Missouri amended 10 CSR 40–5.020, concerning petitions to designate lands unsuitable for mining.

(3) Missouri added language at 10 CSR 40–6.010 stating that persons engaged in mining and reclamation operations shall comply with the terms of their mining permit.

(4) Missouri provided procedures at 10 CSR 40–8.070 for petitioning the Director of the Land Reclamation Commission to initiate rulemaking.

(5) Missouri provided performance standards at 10 CSR 40–4.060 for concurrent surface and underground mining.

(6) Missouri submitted new regulations to amend 10 CSR 40–4.070 in-site processing of coal.

(7) Missouri amended 10 CSR 40–6.010 relative to the expiration date of mining permits to make this regulation consistent with amended section 444.820 of the Act.

(8) Missouri added provisions at 10 CSR 40–8.030 providing for discovery, intervention, award of costs and attorney's fees, and an informal hearing on enforcement proceedings comparable to the provisions of 43 CFR 4.

Subsequent to the public hearing announced today and review of all comments, the Regional Director will transmit to the Director of OSM his recommended decision along with a record composed of the hearing transcript, written presentations, exhibits and copies of all public comments.

Upon receipt of the Regional Director's recommendation, the Director will consider all relevant information in the record and will recommend to the Secretary that the program be approved or disapproved, in whole or in part, or conditionally approved. The recommendation will specify the reasons for the decision. The procedures for the recommended decisions of the Regional Director and the Director to the Secretary are established in 30 CFR 732.12(d) and (e) (44 FR 15326–15327). For further details refer to Sections 732.12 and 732.13 of the permanent regulatory program (44 FR 15326–15327) and corresponding sections of the preamble (44 FR 14959–14961).

At the public hearing, all persons wishing to comment on the proposed program will have the opportunity to do so. Persons who wish to make arrangements to comment at a specific time at the hearing may contact Richard Rieke at the OSM Region IV Office or by phone at (816) 374–3920. In addition, the Regional Director has prescribed the following hearing format and rules of procedure in accordance with 30 CFR 732.12(b)(1) (44 FR 15326).

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter.

The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers.

Public participation in the review of state programs is a vital component in fulfilling the purposes of SMCRA. On September 19, 1979 (44 FR 54444–54445) OSM published guidelines in the **Federal Register** governing contacts between the Department of the Interior and both state officials and members of the public. It is hoped that issuance of these guidelines will encourage full cooperation by all affected persons with the procedures being implemented.

Set forth below is a summary of the contents of the proposed Missouri Program:

1. The Missouri Surface Coal Mining Law.

2. Surface coal mining regulations.

3. Other State laws directly affecting the regulation of surface coal mining operations, i.e., Mining Safety Rules, Missouri Clean Water Law, Missouri Air Conservation Law, Air Pollution Control Regulations, Missouri Dam and Reservoir Safety Act, Missouri Hazardous Wastes Act, and the Missouri Administrative Procedures Act.

4. A legal opinion of the Missouri Attorney General stating that the Land Reclamation Commission has the necessary authority to implement, administer and enforce a permanent regulatory program in accordance with SMCRA and all regulations promulgated thereunder.

5. A section-by-section comparison of the state's laws and regulations with SMCRA and 30 CFR Chapter VII.

6. A letter from Governor Teasdale designating the Missouri Department of Natural Resources, Land Reclamation Commission, as the regulatory authority for administering SMCRA.

7. A description of the existing and proposed sturctural organization of the Department of Natural Resources, Division of Environmental Quality, Land Reclamation Commission.

A copy of supporting agreements between the Land Reclamation Commission and other agencies that will have duties in the state program.

9. A description of the proosed system for:

(a) Receiving, reviewing, disapproving or approving and issuing permits for exploration and mining operations;

(b) Assessing fees for permit applications, including a fee schedule;

(c) Implementing, administering and enforcing a system of performance bonds and public liability insurance;

(d) Inspecting and monitoring coal exploration and mining and reclamation operations, and providing opportunity for public participation in the inspection process;

(e) Enforcing the administrative, civil and criminal provisions of the state Act and regulations, including citizen suit provisions;

(f) Administering and enforcing the permanent program performance standards of the state Act and regulations;

(g) Assessing and collecting civil penalties;

(h) Issuing public notices and holding public hearings;

(i) Coordinating issuance of permits with other state, Federal and local agencies;

(j) Consulting with other appropriate state and Federal agencies in the imlementation of the program;

(k) Designating lands unsuitable for surface coal mining operations, including a description of a planning process for identifying lands unsuitable, a description of the process to allow the public to petition the Land Reclamation Commission to have lands designated as unsuitable for mining;

(l) Monitoring, reviewing and enforcing restrictions against financial interests of state employees in coal mining operations;

(m) Training, examining and certifying blasters;

(n) Providing for public participation in the promulgation of regulations, in the development of the state program under SMCRA, and in the permitting process;

(o) Providing administrative and judicial review of actions taken by regulatory authority, including permit decisions and enforcement actions;

(p) Providing a Small Operator Assistance Program.

10. A listing of statistical information pertaining to the existing program as well as information pertinent to the proposed regulatory program, including:

(a) Coal production figures for each of the last three years;

(b) Acreage approved or permitted for exploration or mining for each of the last three years;

(c) A map showing the geologic distribution of coal in Missouri;

(d) The number of applications for Exploration and Development Operations permits received by the Land Reclamation Commission for each of the last three years;

(e) Projections of annual production and geographic distribution of both exploration and mining operations for the next five years.

11. A summary of both the existing and proposed staff of the Department of Natural Resources, Land Reclamation Program showing job functions, titles, and required job experience and training.

12. A description of how the proposed staffing will be adequate to carry out the functions for the projected workload.

13. A description of projected use of professional and technical personnel available from other state and Federal agencies.

14. A description of the projected annual budget for each of the next two fiscal years.

15. A description of the existing and proposed physical resources to be used in implementing the permanent program.

16. A brief description of other programs administered by the Land Reclamation Commission.

Single copies of the Missouri Surface Mining Act and regulations adopted under that act are available to the public at no charge. Persons interested in obtaining copies should write the Regional Director of OSM at the address listed above.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed Missouri program. Under Section 702(d) of SMCRA (30 U.S.C. Section 1292(d)) approval of a state program does not constitute a major action within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Dated: May 19, 1980.

Raymond L. Lowrie,

Regional Director.

[FR Doc. 80-15917 Filed 5-22-80: 8:45 am]

BILLING CODE 4310-05-M

Heritage Conservation and Recreation Service

36 CFR Part 1204

Determinations of Eligibility for Inclusion in the National Register of Historic Places

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Proposed rule.

SUMMARY: These proposed amendments expand and clarify the role of the State Historic Preservation Officer in the Determination of Eligibility process and amend the procedures by which determinations of eligibility are reviewed by the Heritage Conservation and Recreation Service. The amendments provide for an opinion of eligibility for the National Register of Historic Places and a concise evaluation by the State Historic Preservation Officer on all properly documented determinations of eligibility submitted to the State Historic Preservation Officer by Federal agencies.

DATES: Comments must be received on or before July 22, 1980.

ADDRESS: Written comments should be addressed to the Acting Keeper of the National Register of Historic Places, Heritage Conservation and Recreation Service, Department of the Interior, Washington, D.C. 20243.

FOR FURTHER INFORMATION CONTACT: Ms. Carol D. Shull, Acting Keeper of the National Register, United States Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C. 20243 (202) 343-6401.

SUPPLEMENTARY INFORMATION: Recognizing the importance of the State Historic Preservation Officer in the evaluation process and the Heritage Conservation and Recreation Service's reliance on the State Historic Preservation Officer to interpret National Register criteria in each State, the State Historic Preservation Officer shall provide an opinion on the ligibility of properties, at an agency's request, and provide a concise evaluation on properly documented determinations of eligibility to be submitted with the agency's request for a determination of eligibility.

It is important to emphasize that this change is not designed to modify the basic Federal agency responsibility to identify all potentially eligibile properties within a potential project impact area, to gather the information to evaluate their eligibility in terms of National Register criteria, and to request a determination of eligibility or nominate the identified properties, as appropriate. The changes are designed to emphasize the important role the State Historic Preservation Officer plays in the determination process, to provide greater information from the State Historic Preservation Officer, and to allow greater reliance upon his opinion in the review process at the Heritage Conservation and Recreation Service.

The time frames outlined in the procedures are designed as outside guidelines. The Heritage Conservation and Recreation Service encourages State Historic Preservation Officers to cooperate fully with Federal agencies by responding to requests for their opinions in less than 45 days when possible. The Heritage Conservation and Recreation Service will make every effort to

provide decisions on determinations as expeditiously as possible.

These amendments are developed under the authority of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.* Because the amendments have to do with procedural aspects of the National Register program and have no impact upon the environment, an environmental impact statement is not necessary. The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The originator of these procedures is W. Ray Luce of the National Register of Historic Places (202) 343–6401.

Dated: May 19, 1980.

Chris T. Delaporte,

Director, Heritage Conservation and Recreation Service.

Section 1204.2 (formerly § 63.2 of Part 63, Title 36) is proposed to be amended by adding a new paragraph (d) and by revising and renumbering current paragraphs (d) and (e) as (e) and (f) as follows:

§ 1204.2 Determination of eligibility process.

* * * * *

(d)(1) Before submitting a request for a determination of eligibility to the Keeper of the National Register, the Federal agency is responsible for requesting the opinion and comments of the State Historic Preservation Officer.

(2) Upon receipt of adequate documentation, the State Historic Preservation Officer shall provide the Federal agency with a substantive opinion and comments on the determination of eligibility request including a concise evaluation of significance or non-significance in terms of the National Register criteria for evaluation, identifying criterion/criteria under which the property is judged to be eligible, if applicable, and agreement or disagreement with the proposed boundaries.

(3) The State Historic Preservation Officer's evaluation should address the adequacy of the documentation. If the State Historic Preservation Officer believes the significance of the resource is not fully discussed or disagrees in any way with the agency's comments, his comments should address these concerns. These comments particularly important when the State Historic Preservation Officer disagrees with the agency's assessment. The State Historic Preservation Officer's opinion shall be forwarded to the Federal agency within 45 days of receipt of an adequately documented request, unless the agency and State Historic Preservation Officer agree upon a longer time period.

(e)(1) To request a determination of eligibility, the agency shall submit a letter of request with a description, statement of significance, photographs, and a map, or a statement in accord with 1204.3 below, and the opinion and comments of the State Historic Preservation Officer to the Keeper of the National Register, Heritage Conservation and Recreation Service, Department of the Interior, Washington, D.C. 20243.

(2) Where possible, the documentation on the property should be submitted on a National Register nomination form to expedite review by the State Historic Preservation Officer and the Heritage Conservation and Recreation Service. A Federal agency determination request will be returned to the agency if the State Historic Preservation Officer's opinion and comments are not included unless the Federal agency submits documentation with the request that the State Historic Preservation Officer's opinion has been requested in writing and he/she has not responded. In such instances, the Keeper of the National Register will again request the opinion of the State Historic Preservation Office on the eligibility of the property.

(f)(1) The Keeper of the National Register will respond in writing to the agency's request within 45 days of receipt of a documented request submitted in accord with 1204.2(e) of these procedures. If the Keeper determines that documentation submitted with the request is not sufficient to make a profesional evaluation of the significance of the property, the agency will be advised in writing of the additional information needed. The Keeper will respond to the agency's request within 45 days of receipt of the requested documentation on the property.

(2) The Keeper of the National Register reserves the right to make a determination of eligibility without the State Historic Preservation Officer's opinion, if necessary.

[FR Doc. 80–15803 Filed 5–22–80; 8:45 am]

BILLING CODE 4310–03–M

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36 CFR Part 1208

Historic Preservation Certifications Pursuant to the Tax Reform Act of 1976 and the Revenue Act of 1978

AGENCY: Heritage Conservation and Recreation Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the procedures by which owners desiring tax benefits for rehabilitations of historic buildings or desiring to demolish buildings within Registered Historic Districts, apply for certifications pursuant to the Tax Reform Act of 1976. This proposed rule also incorporates the technical corrections contained in the Revenue Act of 1978.

DATE: Written comments must be delivered or mailed by July 22, 1980.

ADDRESS: Send comments to: Acting Chief, Division of the National Register of Historic Places or Chief, Technical Preservation Services Division, Heritage Conservation and Recreation Service, U.S. Department of the Interior, 440 G Street, N.W., Washington, D.C. 20243.

SUPPLEMENTARY INFORMATION: On October 7, 1977, final rulemaking was published in the **Federal Register** (42 FR 54548) to amend Chapter I Title 36 of the Code of Rederal Regulations by adding a new part 67 concerning historic preservation certifications pursuant to the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1519) made by the Secretary of the Interior (this rulemaking has since been designated and transferred to Chapter XII, Title 36 CFR Part 1208). On November 6, 1978, the Revenue Act of 1978 (Pub. L. 95–600, 92 Stat. 2828) became law, necessitating amendments to these regulations. Sec. 701(f) of this act clarifies portions of Section 2124 of the Tax Reform Act of 1976, while Sec. 315 provides a new tax incentive—an investment tax credit—to encourage the rehabilitation of older buildings. Certifications of rehabilitation are required by the Secretary if an owner chooses to elect the tax credit when the structure is a "certified historic structure."

The purpose of this proposed rule is to incorporate the technical corrections relating to historic preservation certifications contained in the Revenue Act of 1978, to incorporate comments received on the statute certification process, to make minor modifications to the existing certification process, and to more fully explain the process for appealing certification decisions.

To permit a public understanding of the tax-related certifications made by the Secretary of the Interior, the following general description is given of the tax provisions contained in Section 2124 of the Tax Reform Act of 1976, as amended by Sec. 701(f) of the Revenue Act of 1978:

1. Section 2124(f). (Section 191 of the Internal Revenue Code of 1954). Permits a 60-month amortization of certain rehabilitation expenses made in

connection with qualified depreciable properties;

2. Section 2124(b). (Section 280B of the Internal Revenue Code of 1954). Disallows a deduction for demolition of qualified depreciable properties;

3. Section 2124(c). (Section 167(n) of the Internal Revenue Code of 1954). Generally precludes accelerated depreciation for structures built on the site of qualified depreciable properties;

4. Section 2124(d). (Section 167(o) of the Internal Revenue Code of 1954). Provides special depreciation rules for qualified rehabilitated property;

5. Section 2124(e). (Sections 170(f)(3), 2055(e)(2) and 2522(c)(2) of the Internal Revenue Code of 1954). Amends charitable contribution deductions on income, estate, and gift taxes to liberalize deductions for conservation purposes (including historic preservation).

The term "depreciable properties" as used above generally means those properties subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of 1954 and generally excludes owner-occupied homes.

The following general description is given of the tax provision contained in Section 315 of the Revenue Act of 1978:

1. Section 315 (Sections 38 and 48 of the Internal Revenue Code of 1954). Permits an investment tax credit for expenses incurred in rehabilitating certain depreciable properties.

Section 2124 of the Tax Reform Act and Section 315 of the Revenue Act as briefly described above require the Secretary of the Interior to make one or more of the following classes of certifications:

a. Certified Historic Structures. All the tax provisions described above (except subsection 2124(e)) are related to so-called "Certified Historic Structures," which, generally, are defined as qualified depreciable properties of historic character which are either listed in the National Register or are located within a Registered Historic District and certified by the Secretary as contributing to the significance of the district.

b. Certified Rehabilitations. In order for the tax consequences relating to rehabilitation to accrue, the Secretary must determine not only that the rehabilitation was done to a certified historic structure but also that it meets certain standards with respect to the historic character of the property.

c. Certified Statutes and Certified State or Local Historic Districts. Qualified historic structures located in historic districts designated under a statute of the appropriate State or local government are subject to the tax consequences discussed above if the statute is certified by the Secretary as containing criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district and if the district is certified by the Secretary as meeting substantially all the requirements for the listing of districts in the National Register.

Comments on the Certification of State and Local Statutes.

In addition to revising the final rulemaking published in the **Federal Register** on October 7, 1977, concerning certifications of significance and rehabilitation (36 CFR Part 67), this proposed rulemaking also takes into consideration comments received on the interim rulemaking published in the **Federal Register** on August 10, 1977, concerning the certification of statutes (36 CFR 67.9). It revises the interim rulemaking in accordance with these comments and with the technical corrections included in the Revenue Act of 1978 and fully integrates this section with the rest of Part 1208.

When the certification of State statutes will have an impact on local historic districts, the Department of the Interior urges State governments to notify and consult appropriate local officials before submitting a request for certification of the statute.

Discussion of Comments

Several comments were received addressing the criteria a State or local statute must meet to be certified by the Secretary of the Interior.

One organization suggested that the regulations contain more detailed requirements for a certifiable statute including a model statute or ordinance. However, such detailed requirements would exclude many valid statutes and ordinances that otherwise would meet the general criteria of "substantially achieving the purpose of preserving and rehabilitating buildings of historic significance to the district." The criteria adopted in the final rulemaking which require a review body to review alterations to structures within a district is a minimum standard which permits flexibility by allowing the certification of State and local legislation that achieves the purposes of preservation.

The amount of time required to review the request for certification was an issue in some of the comments. However, the present review periods, 45 days at the State level and 45 days at the Department of the Interior, place an outer limit on the processing of a request. In many cases the review can be accomplished in a shorter time frame.

Another suggestion was made to send only a copy of a certification request to the appropriate State Historic Preservation Officer (SHPO) and eliminate the SHPO from the review process. It is the policy of the Heritage Conservation and Recreation Service that the SHPOs participate in the implementation of historic preservation programs, and it is, therefore, appropriate that they participate in the certification process.

A comment was received suggesting that all statutes submitted for certification be authenticated by the proper officials as representing exact legal copies of legislation in effect. The Department of the Interior presumes that the statutes, ordinances, and by-laws submitted for certification by the duly authorized representatives are exact legal copies. Further § 1208.8 requires the appropriate State or local government to notify the SHPO and the Secretary of the Interior in the event of the repeal of a certified statute and to submit any amendments to certified statutes to the SHPO and the Secretary of the Interior for review.

The Revenue Act of 1978 and the Certification of Local Districts

Several comments were received on the interim regulations concerning the procedure for submitting documentation for a State or local district after a statute has been certified. One comment indicated that the requirements for documentation were onerous to prepare and tantamount to preparing a National Register nomination. The Revenue Act, however, requires that before a structure can be certified as being of historic significance to a historic district designated by or under a certified statute, the district must be certified as meeting substantially all of the requirements for the listing of districts in the National Register. The documentation required includes a description of the historic district, a statement of its significance, a map defining the district's boundaries on which is indicated buildings which do not contribute to the district's significance, and representative photographs showing the character of typical streets and buildings. The documentation on a State or local district must be sufficient for the Secretary of the Interior to evaluate it on the basis of National Register criteria for evaluation (see 36 CFR Part 1201). The documentation also must be sufficient for the Secretary of the Interior to determine the contribution made by an individual structure to the historic

character of the district and whether the rehabilitation is consistent with the historic characer of the district in which it is located. It should be noted, however, that while a State or locally designated district may be determined to "substantially meet National Register criteria," this designation is for purposes of the historic preservation provisions of the Tax Reform Act and Revenue Act only.

It has been the experience of the Department of the Interior that it is sometimes difficult to fulfill requests for certification of significance in a timely fashion because the districts in question cannot be certified due to lack of documentation. The Department of the Interior considers the Duly Authorized Representative requesting certification of a statute to be the official responsible for submitting district documentation to the SHPO for certification. If another person is to assume responsibility for the district documentation, the letter requesting statute certification shall indicate that person's name, address and telephone number. The Department of the Interior considers the authorizing statement of the Duly Authorized Representative to indicate that the jurisdiction involved wishes not only that the statute in question be certified but also wishes all historic districts designated by the statute to be certified unless otherwise indicated. A State or local district will not be considered a Registered Historic District until the district itself has been certified by the Secretary. Therefore, the provisions of the Tax Reform Act will not apply to buildings within a State or local district until the district has been certified, even if the statute creating the district has been approved or certified by the Secretary.

Changes have been incorporated in this final rulemaking in response to comments received, based on Heritage Conservation and Recreation Service review and based upon the technical corrections included in the Revenue Act of 1978. The minor changes are as follows:

1. To be certified, a State or local statute need not designate specific historic districts, but must provide a mechanism by which historic districts are designated.

2. Districts created by statutes certified before passage of the Revenue Act of 1978 must themselves be certified before request for certification of significance in those districts can be processed.

3. Statutes that establish historic districts whether by State law or by local statute, must meet the criteria as stated in § 1208.8 to be certified by the Secretary of the Interior. However, State enabling legislation that requires implementing legislation at the local level will not be certified.

For this reason § 1208.8(a) has been changed to reflect the distinction between State statutes designating, or providing a method for designating, historic districts and State statutes enabling local governments to establish historic districts.

4. The certification process, § 1208.8(c), has been altered to require that the letter from the Duly Authorized Representative requesting certification of a State or local statute include the authorized representative's address, telephone number, and the name or position of a person who can be consulted concerning the request for certification. This letter must clearly state that the person or organization requesting certification is the authorized representative for the purpose of that action. In addition, if this person or organization is not to be considered responsible for submitting district documentation for certification, the letter should indicate the responsible person or organization along with an address and telephone number.

5. With regard to the request for certification of individual historic districts, § 1208.9 has been reordered and treated separately recognizing that documentation on such districts need not accompany the request for certification of a statute. Documentation must be submitted through the SHPO for review and forwarded to the Department of the Interior for certification before processing the first request for certification of an individual structure in the district. To avoid longer delays, the Department of the Interior urges that documentation be submitted at the earliest convenient time.

This rulemaking is developed under the authority of Section 101(a)(1) of the National Historic Preservation Act of 1966 U.S.C. 470a–1(a) (170 ed.), as amended, Section 2124 of the Tax Reform Act of 1976, 90 Stat. 1519, and sections 701(f) and 315 of the Revenue Act of 1978, 92 Stat. 2828. In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331, et seq.) the Heritage Conservation and Recreation Service has prepared an environmental assessment of these regulations. Based on this assessment, it is determined that implementation of the regulation is not a major Federal action that would have a significant effect on the quality of the human environment and that an environmental impact statement is not required. The assessment, on file in the office of the Acting Associate Director for Cultural Programs, Heritage Conservation and Recreation Service, U.S. Department of the Interior, 440 G Street NW., Washington, D.C. 20243, is available for public inspection. The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under E.O. 12044 and 43 CFR Part 14.

The originators of these procedures are Sally Oldham of the National Register of Historic Places (202) 343–6401 and Ward Jandl of of Technical Preservation Services (202) 343–6384.

Dated: May 16, 1980.

Robert L. Herbst,

Assistant Secretary of Interior.

In consideration of the foregoing comments it is proposed to amend 36 CFR Part 1208 as follows:

PART 1208—HISTORIC PRESERVATION CERTIFICATIONS PURSUANT TO THE TAX REFORM ACT OF 1976 AND THE REVENUE ACT OF 1978

Sec.

1208.1 The Tax Reform Act of 1976 and the Revenue Act of 1978.
1208.2 Definitions.
1208.3 Introduction to certifications of significance and rehabilitation.
1208.4 Certifications of historic significance.
1208.5 Standards for evaluating structures within registered historic districts.
1208.6 Certifications of rehabilitation.
1208.7 Standards for rehabilitation.
1208.8 Certifications of statutes.
1208.9 Certifications of state of local historic districts.
1208.10 Appeals.

Authority: Sec. 101(a)(1), 80 Stat. 915, as amended (16 U.S.C. 470–1(a)); Sec. 2124, Stat. 1519. Sec. 315, 92 Stat. 2828.

§ 1208.1 The Tax Reform Act of 1976 and the Revenue Act of 1978.

The Tax Reform Act of 1976, 90 Stat. 1519, and the Revenue Act of 1978, 92 Stat. 2828, require the Secretary to make certifications of historic district statutes and of State and local districts, certifications of significance, and certifications of rehabiliation in connection with certain tax incentives involving historic preservation. The procedures for obtaining such certifications are set forth below. It is the responsibility of owners wishing certifications to provide sufficient documentation to their State Historic Preservation Officers (SHPOs) and the Heritage Conservation and Recreation Service to make certification decisions. The Internal Revenue Service is responsible for all procedures, legal determinations and rules and regulations concerning the tax consequences of the historic preservation provisions of the Tax

Reform Act of 1976 and the Revenue Act of 1978. Any certifications made by the Secretary pursuant to this part shall not be considered as binding upon the Internal Revenue Service with respect to tax consequences or interpretations of the Internal Revenue Code of 1954. Certifications made by the Secretary do no constitute determinations that a structure is of the type subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of 1954.

§ 1208.2 Definitions.

As used in these procedures:

(a) "Certified Historic Structure" means a structure which is of a character subject to the allowance for depreciation provided in Section 167 of the Internal Revenue Code of 1954 which is either (1) listed in the National Register; or (2) located in a Registered Historic District and certified by the Secretary of the Interior as being of historic significance to the district.

(b) "Certified Rehabilitation" means any rehabilitation of a certified historic structure within the time frame specified by the law, which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of such property, and, where applicable, with the district in which such property is located.

(c) "Historic District" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects which are united by past events or aesthetically by plan or physical development.

(d) "Inspection" means a visit by an authorized representative of the Secretary of Interior to a certified historic structure for the purposes of reviewing and evaluating the significance of the structures and the completed rehabiliation work.

(e) "National Register of Historic Places" means the national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture that the Secretary is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966.

(f) "National Register Program" means the survey, planning, and registration program that has evolved under the Secretary's authority pursuant to 101(a)(1) of the National Historic Preservation Act of 1966. The procedures of the National Register program appear in 36 CFR Part 1202.

(g) "Owner" means a person who holds a fee-simple interest in a structure; or a holder of a life estate in property; or a holder of a life estate in property with remainder to another person; or a lessee whose lease term without regard to renewal periods extends beyond the useful life of the improvements or for 30 years, whichever is greater.

(h) "Registered Historic District" means any district listed in the National Register or any district designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district and which is certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

(i) "Rehabilitation" means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural and cultural values.

(j) "Secretary" means the Secretary of the Interior or the designee authorized to carry out his responsibilities.

(k) "Standards for Rehabilitation" means the Secretary of the Interior's "Standards for Rehabilitation" as set forth in § 1208.7 hereof.

(l) "State or local statute" means a law of the State or local government designating, or providing a method for the designation of, a historic district or districts.

(m) "State Historic Preservation Officer" (SHPO) means the official within each State, designated by the Governor at the request of the Secretary of the Interior, to act as liasion for purposes of implementing historic preservation programs within the States.

§ 1208.3 Introduction to certifications of significance and rehabilitation.

Who may apply:

(a) Ordinarily, only the owner (as defined in § 1208.2 above) of the property in question may apply for the certifications described in §§ 1208.4 and 1208.6 hereof.

(b) Upon request of a SHPO, the Secretary may determine whether or not a particular structure located within a Registered Historic District qualifies as a certified historic structure. The Secretary shall do so, however, only after notifying the property owner of record of the request, informing such owner of the possible tax consequences of such a decision, and permitting the property owner a 30 day time period to submit written comments to the Secretary prior to decision.

(c) Owners of structures which (1) appear to meet National Register criteria but are not yet listed in the National Register; or (2) are located within a historic district which appears to meet National Register criteria but has not yet been listed in the National Register; or (3) are located within a State or locally designated historic district for which a certification request has been received and adequate documentation for district certification has been submitted, may request preliminary determinations of the Secretary, as to whether such structures may qualify as certified historic structures when and if the property or district is listed in the National Register or the State or local district is certified by the Secretary. Any such determinations are preliminary only and not binding upon the Secretary. The property will be considered by the Secretary for actual certification at the time the individual property or district is listed in the National Register.

(d) The Secretary will review and evaluate rehabilitation proposals in accordance with the Secretary's "Standards for Rehabilitation," when submitted by persons other than owners, but will issue certifications of rehabilitation only to owners of "certified historic structures." Requests for these determinations shall be made in accordance with procedures set forth in § 1208.6(i) hereof. How to apply:

(1) Requests for certifications of historic significance and/or of rehabilitation shall be made on "Historic Preservation Certification Applications" (approved OMB form No. 42R–1765). Part 1 of the application shall be used in requesting an evaluation and certification (or decertification) of historic significance or a preliminary determination of historic significance, while part 2 shall be used in requesting an evaluation of proposed rehabilitation work or a certification of completed rehabilitation.

(2) Application forms are supplied to the SHPOs by the Department of the Interior. Owners may obtain "Historic Preservation Certification Applications" from the appropriate SHPO.

(3) Requests for certifications shall be made through the appropriate SHPO. The recommendations of the SHPO are generally accepted by the Secretary. If for some reason the review periods specified in §§ 1208.4 and 1208.6 for the SHPO have expired without recommendations being made and/or the requests forwarded to the Secretary, the owner may notify HCRS directly of this fact. HCRS in turn will consult with the SHPO to ensure that a review of the application is completed in a timely manner.

(4) Although certifications of significance and rehabilitation are discussed separately below, owners are encouraged to submit parts 1 and 2 of the "Historic Preservation Certification Application" together to the SHPO.

§ 1208.4 Certifications of historic significance.

(a) Requests for evaluation of historic significance as required by sections 2124(a), (b), (c), and (d) of the Tax Reform Act of 1976 should be made by the owner in accordance with respective procedures for the following categories of certifications: (1) That a structure is located within a Registered Historic District and is of historic significance to such district; (2) that a structure is located within a Registered Historic District and is not of historic significance to such district.

(b) If the property is individually listed in the National Register, it automatically is considered a certified historic structure.

(1) To determine whether or not a property is individually listed in the National Register, the owner should consult the listing of National Register properties in the **Federal Register** (found in most large libraries). If access to the **Federal Register** is difficult, the owner should contact the appropriate SHPO for this information.

(2) If the property is individually listed in the National Register and the owner believes it has lost the characteristics which caused it to be nominated and therefore wishes it delisted, the owner should consult the SHPO and refer to the delisting procedures outlined in 36 CFR 1202.

(3) Many listings in the National Register include more than one structure but are not designated historic districts (i.e. an estate or a mill complex). For these listings if the resource is under a single ownership, the entire resource will be considered a certified historic structure (if depreciable) unless (i) the owner specifically requests that a portion be decertified; or (ii) in the course of a review of a request for certification of rehabilitation the Secretary determines that a portion or portions of the resource are not specifically eligible for certification. When forwarding certification applications to the Secretary for these listings, the SHPO shall submit written comments addressing what portions of the listing, if any, should not be considered for certification and the reasons which form the basis for this opinion. If the resource is under multiple ownership, separate applications should be submitted.

(4) If it is proposed that a structure individually listed in the National Register be moved as a part of a request for certification of rehabilitation, the owner must follow the procedures outlined in 36 CFR 1202.16. Properties listed in the National Register should be moved only when there is no feasible alternative for preservation. When a property is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(c) If the property is located within the boundaries of a Registered Historic District and the owner wishes the Secretary to certify as to whether the structure is or is not of historic significance to the district, the owner must complete Part 1 of the "Historic Preservation Certification Application" and submit it to the SHPO. The following minimum documentation is required:

(1) Name of owner;

(2) Name and address of structure;

(3) Name of historic district;

(4) Current photographs of structure, photographs of the structure prior to alteration if rehabilitation has been completed, and photograph(s) showing the structure along with adjacent structures on the street;

(5) Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;

(6) Brief statement of significance (architectural and/or historical);

(7) Sketch map showing structure's location within the district; and

(8) Signature of property owner requesting the evaluation.

(d) If an owner begins or completes demolition or substantial alteration of a structure in a Registered Historic District without knowledge of the Tax Reform Act requirements for certification of non-significance, he may request certification that the structure was not of historic significance to the district prior to substantial alteration or demolition in the same manner as stated in paragraph (c) of this section. The owner should be aware, however, of the requirements under the Revenue Act of 1978 (92 Stat. 2900, 2903) sections 701(f)(2)(B)(iii) and 701(f)(5)(b) that the taxpayer must certify to the Secretary of the Treasury that, at the beginning of such demolition or substantial alteration, he in good faith was not aware of the certification requirement by the Secretary of the Interior.

(e) If an owner wishes to obtain certified rehabilitation status for a building which is proposed to be moved into a Registered Historic District or which is within a Registered Historic District and will be moved elsewhere in the district, he must complete Part 1 of the "Historic Preservation Certification Application" and, in addition to the minimum documentation outlined above, should submit documentation which discusses:

(i) The reasons for the move;

(ii) The effect of the move on the property's appearance (any proposed demolition, proposed changes in foundations, etc.);

(iii) The new setting and general environment of the proposed site.

Photographs showing the proposed location must be sent with the documentation. Properties included in Registered Historic Districts should be moved only when there is no feasible alternative for preservation. When a property is moved, every effort should be made to re-establish its historic orientation, immediate setting, and general environment.

(f) Structures within Registered Historic Districts will be evaluated for conformance with the Secretary's "Standards for Evaluating Structures within Registered Historic Districts" as set forth in § 1208.5.

(g) The SHPO will sign Part 1 indicating his recommendation as to the significance of the structure and forward Part 1, the photographs, and the map to the Department of the Interior within 45 days after the owner has submitted the required information.

(h) A preliminary certification of significance may be requested by the owner by filling out Part 1 of the Historic Preservation Certification Application and sending it to the SHPO. Preliminary certification requests will be reviewed by the SHPO for conformance with the National Register criteria and/or the Secretary's Standards and for the State's ability to handle the future nomination or district certification in a timely manner. The SHPO is not compelled to sign the application form even if he believes the propery meets the necessary criteria. The SHPO shall forward the application with his recommnedation to the Secretary for review. The Secretary shall notify the owner and the SHPO of the preliminary certification decision. The time frames applicable to other certification of significance requests shall apply to preliminary certification requests also.

(i) In certain cases where it is difficult to make a determination of significance because it is impossible to determine the amount of remaining historic fabric (i.e. where metal screening obscures facades) or where it is impossible to assess the potential for rehabilitation due to structural or other conditions, it

may be necessary to make a certification of significance conditional upon approval of the completed rehabilitation. A conditional certification indicates that the property appears to have the potential to contribute to the district but will not be considered a certified historic structure until such time as a certification of rehabilitation is issued.

(j) Once the significance of a structure located within a Registered Historic District has been determined by the Secretary, written notification will be sent to the property owner and the SHPO in the form of a certification of significance or conditional certification or as a notice that the structure does not contribute to the historic significance of the district. Written notification will be made within 30 days of receipt of Part 1 of a "Historic Preservation Certification Application," with documentation as specified above.

§ 1208.5 Standards for evaluating structures within registered historic districts.

Structures located within Registered Historic Districts are reviewed by the Secretary for conformance to the following "Standards for Evaluating Structures within Registered Historic Districts." These standards shall be used by the SHPO in making recommendations to the Secretary.

(a) A structure contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.

(b) A structure not contributing to the historic significance of a district is one which detracts from the district's sense of time and place and historical development; or one where the integrity of the original design or individual architectural features or spaces have been irretrievably lost; or one which cannot reasonably be returned to a state of utility through rehabilitation.

(c) Ordinarily structures that have been built within the past 50 years shall not be considered eligible unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

§ 1208.6. Certification of rehabilitation.

Property owners desirous of having rehabilitations of certified historic structures certified by the Secretary as being consistent with the historic character of the structure or district in which the structure is located, thus qualifying as "certified rehabilitations," shall comply with the following procedures:

(a) Complete Part 2 of the "Historic Preservation Certification Application" and submit it to the SHPO. The application may describe a proposed rehabilitation project, work in progress, or a completed rehabilitation. In all cases, however, photographs showing the appearance of the structure prior to rehabilitation, both on the exterior and on the interior, must accompany the application. Other documentation, such as sketch plans and elevation drawings, may be necessary to evaluate certain rehabilitation projects. Owners who undertake rehabilitation projects without prior approval from the Secretary do so at their own risk.

(b) If the work described in Part 2 of the application form is not completed, the appropriate SHPO shall review the proposed project as to whether or not the project is likely to meet the Secretary of the Interior's "Standards for Rehabilitation" and forward the application and written recommendations to the Secretary. In most cases, this shall be done within 45 days of receipt of the documentation detailed in paragraph (a) of this section.

(c) Upon receipt of the application describing the proposed project and the recommendation of the SHPO, the Secretary shall determine, normally within 45 days, if the proposed project is consistent with the "Standards for Rehabilitation." If the proposed project does not meet the "Standards for Rehabilitation," the owner shall be advised of necessary revisions to meet such standards. These notifications will be made in writing.

(d) When the rehabilitation project has been completed, the owner shall notify the appropriate SHPO in writing of the project completion date and shall sign a statement that, in the owner's opinion, the completed rehabilitation meets the Secretary's "Standards for Rehabilitation" and is consistent with the work described in Part 2 of the "Historic Preservation Certification Application." At this time the owner will be requested to provide photographs of the completed rehabilitation project; other documentation that the SHPO believes is necessary to make a recommendation to the Secretary; and his social security or employee identification number. Certifications will be issued to rehabilitations which have been carried out in accordance with proposed plans previously approved by the Secretary.

(e) The SHPO shall forward his recommendations as to certification to the Secretary within 45 days of receipt of the project completion date and documentation described in paragraph (d) of this section.

(f) The completed project may be inspected by an authorized representative of the Secretary to determine if the work meets the "Standards for Rehabilitation." The Secretary reserves the right to make inspections at any time after completion of the rehabilitation and to withdraw certification of the rehabilitation upon determining that the project does not meet or no longer meets the Secretary's "Standards for Rehabilitation" as completed.

(g) Notification as to certification shall be in writing and will normally be made by the Secretary within 15 days of receipt of the SHPO's recommendations if the proposed rehabilitation had been previously approved by the Secretary. Otherwise, notification will normally be made within 45 days.

(h) In the event that the completed rehabilitation project does not meet the "Standards for Rehabilitation," an explanatory letter will be sent to the owner. An appeal from this decision may be made by the owner pursuant to § 1208.10 herein.

(i) A preliminary determination that a rehabilitation project is consistent with the Secretary's "Standards for Rehabilitation" may be made for structures not yet designated "certified historic structures," although issuance of a certification of rehabilitation will be made only for "certified historic structures." Such a determination may be requested by the owner by completing part 2 of a "Historic Preservation Certification Application." A determination that rehabilitation of a structure not yet designated a "certified historic structure" meets the Secretary's "Standards for Rehabilitation" does not constitute a certification of rehabilitation but does provide an owner with guidance as to the appropriateness of the rehabilitation. In cases where such a determination is requested for a property which is not yet listed in the National Register or for a property located in a State or local district which has not yet been certified, the SHPO shall send written notification to the person requesting the determination outlining the procedural steps necessary to qualify the property as a certified historic structure. It should be understood that additional research on the structure and/or the district may affect the Secretary's final determination as to whether the rehabilitation project is consistent with the Secretary's "Standards for rehabilitation."

(j) SHPOs will be notified in writing of all rehabilitation certification decisions made by the Secretary.

§ 1208.7 Standards for rehabilitation.

(a) The following "Standards for Rehabilitation," a section of the Secretary's "Standards for Historic Preservation Projects," shall be used to determine if rehabilitation of a certified historic structure qualifies as "certified rehabilitation." The Standards shall be applied taking into consideration the economic and technical feasibility of each project; in the final analysis, however, the rehabilitation must be consistent with the historic character of the structure and, where applicable, with the district in which it is located.

(1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alterations of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

(2) The distinguishing original qualities or character of a building, structure, or site and its environment, shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

(3) All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

(5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

(6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

(7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

(8) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any rehabilitation project.

(9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

(10) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(b) Guidelines and other technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's "Standards for Rehabilitation," are available from the Heritage Conservation and Recreation Service, U.S. Department of the Interior, 440 G Street NW., Washington, D.C. 20243.

(c) In certain limited cases, it may be necessary to dismantle and rebuild portions or all of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Department of the Interior will consider such extreme interventions as part of a certified rehabilitation if (1) significant architectural features are retained; and (2) adequate historic fabric is retained to maintain the architectural and historic integrity of the overall structure. Substantial alterations may be subject to the provisions of sections 280B and 167(n) of the Internal Revenue Code of 1954.

§ 1208.8 Certifications of statutes.

(a) State or local statutes which will be certified by the Secretary of the Interior. For the purpose of this regulation, a State or local statute is a law of the State or local government designating, or providing a method for the designation of, a historic district or districts. This includes any bylaws or ordinances that contain information necessary for the certification of the statute. A statute must contain criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district. To be certified by the Secretary of the Interior, the statute generally must provide for a duly designated review body, such as a review board or commission, with power to review proposed alterations to structures within the boundaries of the district or districts designated under the statute. When the certification of State statutes will have an impact on districts in specific localities, the Department of the Interior urges State governments to notify and consult with appropriate local officials prior to submitting a request for certification of the statute. State enabling legislation which authorizes local governments to designate, or provides local governments with a method to designate, a historic district or districts will not be certified unless accompanied by local statutes that implement the purpose of the State law.

(b) Who may apply. Requests for certification of State or local statutes may be made only by the duly authorized representative of the government which enacted the statute. The applicant shall certify in writing that he or she is authorized by the appropriate State or local governing body to apply for certification.

(c) Statute certification process. Requests for certification of State or local statutes shall be made as follows:

(1) Requests for certification of statutes shall be submitted to the appropriate SHPO and shall include the following information:

(i) A request in writing from the Duly Authorized Representative certifying that he or she is authorized to apply for certification. The request should include the name or title of a person to contact for further information and his or her address and telephone number. The authorized representative is responsible for providing historic district documentation for review and certification prior to the first certification or significance in a district unless another responsible person is indicated including his or her address and telephone number.

(ii) A copy of the statute(s) for which certification is requested, including any by-laws or ordinances that contain information necessary for the certification of the statute.

(iii) Local governments shall submit a copy of the State enabling legislation, if any, authorizing the designation of historic districts.

(2) The SHPO shall review the statute(s) and assess whether the statute(s) contain criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district(s) based upon the standards set out above in § 1208.8(a). If the statute(s) contain such a provision and if, in the opinion of the SHPO, this and other provisions in

the statute will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, the SHPO should recommend that the statute be certified.

(3) The SHPO shall forward the request with the material submitted as specified in § 1208.8(c) with his or her written recommendation as to whether the statute should be certified to the Secretary. The SHPO shall forward the request with his or her recommendation within 45 days of receipt of the request from the duly authorized representative, provided the request is submitted in accord with § 1208.8(c) above. If this period has expired without such actions being taken, the owner may notify HCRS directly of this fact. HCRS in turn will consult with the SHPO to ensure that a review of the application is completed in a timely manner.

(4) The Secretary shall review the request and the recommendation of the SHPO and make a decision as to certification within 45 days of receipt of the request. If the statute(s) contain criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, the Secretary will certify the statute(s).

(5) The Secretary shall provide written notification to the applicant and the appropriate SHPO when certification of the statute is given or denied. If certification is denied, the notification will provide a justification for such denial.

(d) Amendment or Repeal of statute(s). State or local governments, as appropriate, must notify the Secretary of the Interior in the event that certified statutes are repealed. If a certified statute is amended, the Duly Authorized Representative shall submit the amendment(s) to the SHPO for review in accordance with procedures outlined above. The SHPO shall forward the amendment within 45 days of receipt with his or her opinion as to whether the amended statute continues to meet the criteria outlined in § 1208.8(a) to the Secretary. Written notification of the Secretary's decision as to whether the amended statute continues to meet these criteria will be sent to the duly authorized representative within 45 days of receipt and to the SHPO.

§ 1208.9 Certification of State or local historic districts.

(a) The documentation on a particular State or local historic district must be submitted to the SHPO and the district must be certified by the Secretary before the Secretary will process requests for certification of an individual structure within a district or districts established under a certified statute.

(b) The following documentation shall be submitted on each district designated under a State or local statute to the appropriate SHPO and shall include the following information:

(1) A concise description of the general physical or historical qualities which makes this a district; an explanation for the choice of boundaries for the district; descriptions of typical architectural styles and types of structures in the district.

(2) A concise statement of why the district has significance and why it substantially meets National Register criteria.

(3) A definition of what types of structures do not contribute to the significance of the district as well as an estimate of the percentage of structures within the district that do not contribute to its significance.

(4) A map showing all district structures with, if possible, identification of contributing and non-contributing structures; the map should clearly show the district's boundaries.

(5) Photographs of typical streets in the district as well as major types of contributing and non-contributing structures (all photos should be keyed to the map).

(c) The SHPO shall evaluate the district using the National Register criteria for evaluation (36 CFR Part 1202). Within 45 days of the receipt of the district documentation, the SHPO shall forward this information to the Department of the Interior along with his or her written recommendation as to whether the district meets substantially all the requirements for National Register listing. If for some reason this review period expires without a recommendation being made and for the requests forwarded to the Secretary, the owner may notify HCRS directly of this fact. HCRS in turn will consult with the SHPO to ensure that a review of the information is completed in a timely manner.

(d) Districts designated by certified State or local statutes shall be evaluated using the National Register Criteria for Evaluation (36 CFR Part 1202) within 45 days of the receipt of the required documentation by the Department of the Interior. Written notification of the Secretary's decision will be sent to the Duly Authorized Representative or to the person designated as responsible for the district documentation and the SHPO.

Certification of such statutes under this part in no way constitutes certification of significance of individual structures within the district or of the rehabilitation by the Secretary for purposes of section 2124.

(f) Additional Districts. Documentation on additional districts designated under a State or local statute that has been certified by the Secretary of the Interior should be submitted to the Secretary for certification following the same procedure and including the same information outlined in the section above.

(g) The Department of the Interior urges State and local review boards or commissions to become familiar with the standards used by the Secretary of the Interior for certifying the rehabilitation of historic structures and to consider their adoption for local design review.

§ 1208.10 Appeals.

An appeal may be made from any of the certifications or denials of certification made pursuant to this part. Such appeals must be in writing and received by the Director, Heritage Conservation and Recreation Service, U.S. Department of the Interior, 440 G Street, NW., Washington, D.C. 20243 within 30 days of receipt of the decision which is the subject of the appeal. The appellant may request the opportunity for a meeting with Director to discuss the appeal. The Director, Heritage Conservation and Recreation Service, or his designee, will review such appeals, the written record of the decision in question, and shall notify the appellant of his decision within 30 days of its receipt unless the appellant is required to submit additional information. In reviewing such appeals, the Director shall consider: (1) Errors in professional judgment; (2) additional information provided; and (3) substantial procedural errors before rendering a final decision. The decision of the Director shall be the final administrative decision on the matter. Appeals pursuant hereto should be mailed to the address noted above.

[FR Doc. 80-15785 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1499-6]

Approval and Promulgation of Ohio Implementation Plan; Emergency Episode Revision

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This rulemaking proposes to approve revisions to the Emergency Episode Procedures in the State Implementation Plan (SIP) for the State of Ohio. This revision was submitted by the Ohio Environmental Protection Agency (Ohio EPA) on May 8, 1979.

DATES: Comments must be submitted by no later than June 23, 1980.

ADDRESS: Comments to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Environmental Protection Specialist, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, 312–886–6053.

Copies of the revision and the technical support document are available at the addresses cited below:

Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Ohio Environmental Protection Agency, P.O. Box 1049, Columbus, Ohio 43216

SUPPLEMENTARY INFORMATION: On January 30, 1972, the Governor of Ohio submitted its SIP to the Environmental Protection Agency for approval pursuant to Section 110 of the Clean Air Act. This submittal included, among other things, provisions addressing procedures for emergency episodes pursuant to Section 110(a)(2)(F)(v) of the Clean Air Act. On April 15, 1974, the United States Environmental Protection Agency (USEPA) completed Federal rulemaking on the procedures to implement control plans in case of emergency episode situations by approving Ohio Rules AP–11–01 through AP–11–04 as part of the federally approved Ohio SIP (39 FR 12539).

Elements of an emergency episode plan include, but are not limited to, a contingency plan which will prevent ambient pollutant concentrations from reaching levels which could cause significant harm to the health of persons, specifications for two or more stages of episode criteria, and provisions for public announcement whenever any episode stage has been determined to exist. The complete requirements for an emergency episode plan are outlined in 40 CFR 51.16.

On May 8, 1979, the Ohio EPA submitted revisions of Rules 3745–25–01 through 3745–25–04, previsouly codified as Rules AP–11–01 through AP–11–04, which comprise Ohio EPA's Emergency Episode Procedures. The major amendments to the existing rules are:

Rule 3745–25–01, Air Pollution Emergency

The reference in this rule to "Air Pollutants" was changed to "Air Contaminants."

Rule 3745–25–02, Episode Criteria

(a) The definition of "Air Pollution Forecast" for photochemical oxidants was modified. The new definition is: "An internal watch by the Ohio EPA shall be actuated by a National Weather Service advisory that an Atmospheric Stagnation Advisory is in effect or the equivalent local forecast of stagnant atmospheric condition. The air pollution forecast for photochemical oxidants shall take into consideration, but not be limited to, ambient temperatures, surface winds, and ultraviolet solar radiation levels."

(b) Based on a study of potential health effects of ozone and photochemical oxidants, the Ohio EPA has changed the alert level for photochemical oxidants from 0.1 ppm to 0.2 ppm.

(c) The condition that an episode may be completely eliminated when no episode stage criteria continue to exist was added to the termination clause for all pollutants.

Rule 3745–25–03, Emission Control Action Programs—Tables 1 to 5

Table 4 was modified to reflect revised emission reduction objectives for hydrocarbons. Sources must reduce hydrocarbon emissions during periods of alerts, warnings, and emergencies for each industrial process. The degree of reduction is related to the episode level and ranges from voluntary reduction, reduction considering reasonable economic hardships, and reduction without causing injury to persons or damage to equipment, respectively.

Rule 3745–25–04, Emergency Orders

Provisions were added to this rule to encourage less automobile use during "Alerts", "Warnings" and "Emergencies". To encourage less automobile usage, the public will be informed of the severity of the levels through the communications network.

USEPA has reviewed these revisions to Rules 3745–25–01 through 3745–25–04 and has determined that they satisfy the statutory and regulatory requirements of the Clean Air Act. Therefore, USEPA proposes to approve the revisions to Rules 3745–25–01 through 3745–25–04, inclusive, as part of the Federally approved Ohio SIP.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations, "specialized". I have reviewed this proposed regulations pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations", signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This Notice of Proposed Rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

Dated: April 9, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80–15882 filed 5–22–80; 8:45 am]

BILLING CODE 6560–01–M

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40 CFR Part 52

[FRL 1499–5]

Approval and Promulgation of Implementation Plans—New Hampshire; Receipt of Implementation Plan Revisions: Public Participation and Impact Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Submittal to Satisfy Conditions of Plan Approval.

SUMMARY: This notice is to announce the receipt of State Implementation Plan (SIP) revisions for New Hampshire. The revisions were submitted on February 22, 1980 to satisfy two of the conditions of EPA's recent approval of New Hampshire's Attainment Plan SIP revisions, which were required under Part D of the Clean Air Act. New Hampshire's submittal amends the narrative portion of the SIP by adding public participation provisions and an analysis of the effects of the Attainment Plan on air quality, health, welfare, the economy, energy supply, and the social environment.

DATES: See Supplementary Information.

ADDRESSES: Copies of the New Hampshire submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; and New

Hampshire Air Resources Agency, State Laboratory Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Gail Petersen, Office of Public Awareness, EPA Region I, Room 2203, JFK Federal Building, Boston, Massachusetts 02203, (617) 223–0967.

SUPPLEMENTARY INFORMATION: EPA published a final rulemaking notice in the **Federal Register** on April 11, 1980 (45 FR 24869), conditionally approving New Hampshire's Attainment Plan SIP revisions submitted on May 29, 1979. These SIP revisions were found to be in substantial compliance with the requirements of Part D of the Clean Air Act, since they implement new measures for controlling air pollution which will result in attainment of the primary National Ambient Air Quality Standards by December 31, 1982. However, one of the conditions for approval of the Attainment Plan was that by March 31, 1980, the State must submit a comprehensive plan for public participation in compliance with Section 105 grant conditions for 1980; a second condition was that the state must submit an analysis of and public comment on the health, welfare, air quality, economic, energy, and social effects of the provisions adopted in the Attainment Plan, also by March 31, 1980.

New Hampshire has submitted SIP revisions, adding public participation provisions and an impact analysis of the Attainment Plan, by the required deadline. EPA is presently reviewing the state's submittal to determine compliance with Clean Air Act requirements, and intends to publish a proposed rulemaking notice in the **Federal Register** by May 30, 1980. The conditional approval of the SIP will be continued until EPA's final action is published in the **Federal Register.**

Dated: May 12, 1980.

Robert C. Thompson,

Acting Regional Administrator, Region I.

[FR Doc. 80-15883 Filed 5-22-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1499-4]

Approval and Promulgation of Implementation Plans—Vermont; Receipt of Implementation Plan Revision: Public Participation Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Submittal to Satisfy Condition of Plan Approval.

SUMMARY: This notice is to announce the receipt of a State Implementation Plan (SIP) revision for Vermont. The revision was submitted on March 28, 1980 to satisfy a condition of EPA's recent approval of Vermont's Attainment Plan SIP revisions, which were required under Part D of the Clean Air Act. Vermont's submittal amends the narrative portion of the SIP by adding public participation provisions.

DATES: See Supplementary Information.

ADDRESSES: Copies of the Vermont submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; and Vermont Agency of Environmental Conservation, Air and Solid Waste Programs, State Office Building, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Gail Petersen, Office of Public Awareness, EPA, Region I, Room 02203, JFK Federal Building, Boston, Massachusetts 02203, (617) 223–0967.

SUPPLEMENTARY INFORMATION: EPA published a final rulemaking notice in the **Federal Register** on February 19, 1980 (45 FR 10775), conditionally approving Vermont's Attainment Plan SIP revisions submitted on March 21, 1979. These SIP revisions were found to be in substantial compliance with the requirements of Part D of the Clean Air Act, since they implement new measures for controlling air pollution which will result in attainment of the primary National Ambient Air Quality Standards by December 31, 1982. However, one of the conditions of approval of the Attainment Plan was that by March 31, 1980 the state must submit as a SIP revision a plan to provide a mechanism for the public and for local and state officials to participate in the development of future SIP revisions.

Vermont has submitted a SIP revision adding public participation provisions by the required deadline. EPA is presently reviewing the state's submittal to determine compliance with Clean Air Act requirements and intends to publish a proposed rulemaking notice in the **Federal Register** by May 30, 1980. The conditional approval of the SIP will be continued until EPA's final action is published in the **Federal Register.**

Dated: May 12, 1980.

Robert C. Thompson,

Acting Regional Administrator, Region I.

[FR Doc. 80-15884 Filed 5-22-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[FRL 1499-3]

Approval and Promulgation of Implementation Plans—Massachusetts; Receipt of Implementation Plan Revision: Volatile Organic Compound Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Submittal to Satisfy Conditions of Plan Approval.

SUMMARY: This notice is to announce the receipt of State Implementation Plan (SIP) revisions for Massachusetts. The revisions were submitted on March 20, 1980 to satisfy three of the conditions of EPA's proposed approval of Massachusetts' Attainment Plan SIP revisions, which were required under Part D of Clean Air Act. Massachusetts' submittal adds regulations to the SIP to control volatile organic compound (VOC) emissions from solvent metal degreasing, petroleum storage and marketing, and cutback asphalt.

DATES: See Supplementary Information.

ADDRESSES: Copies of the Massachusetts submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; and Massachusetts Department of Environmental Quality Engineering, Division of Air Quality Control, Room 320, 600 Washington Street, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Barbara Ikalainen, Air Branch, EPA Region I, Room 1903, JFK Building, Boston, Massachusetts 02203, (617) 223–5609.

SUPPLEMENTARY INFORMATION: EPA published a proposed rulemaking notice in the **Federal Register** on March 7, 1980 (45 FR 14886), proposing conditional approval of Massachusetts' Attainment Plan SIP revisions submitted on May 16, 1979. These revisions were submitted to comply with the requirements of Part D of the Clean Air Act by implementing new measures for controlling air pollution which are designed to achieve attainment of the primary and

secondary National Ambient Air Quality Standards for ozone and carbon monoxide by December 31, 1987. However, EPA's proposed approval is based on a commitment by the state to meet several conditions, three of which specified that by March 15, 1980 the state must adopt and submit regulations controlling VOC emissions from solvent metal degreasing, petroleum storage and marketing, and cutback asphalt.

Massachusetts has submitted SIP revisions regulating these three types of sources within five days of the required deadline. EPA is presently reviewing the state's submittal to determine compliance with Clean Air Act requirements, and intends to publish a proposed rulemaking notice in the **Federal Register** by May 15, 1980.

Dated: May 12, 1980.

Robert C. Thompson,

Acting Regional Administrator, Region I.

[FR Doc. 80-15885 Filed 5-22-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1499-2]

Approval and Promulgation of Implementation Plans—Connecticut; Receipt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt and Advance Notice of Proposed Rulemaking.

SUMMARY: This notice is to announce the receipt of additions to the State Implementation Plan (SIP) revisions for Connecticut which are available for public review and comment. Earlier revisions to the Connecticut SIP, which were received by EPA on June 27, and December 28, 1979, were described in Notices published in the **Federal Register** on July 10, 1979 (44 FR 40360) and February 13, 1980 (45 FR 9750).

A Notice of Proposed Rulemaking describing this and the prior submittals and EPA's intended approval or disapproval action will be published in the **Federal Register** at a later date.

DATES: See Supplementary Information.

ADDRESSES: Copies of the revisions are available for inspection at the following addresses: Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20406; and the Department of Environmental Protection, Air Compliance Unit, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06115.

Written Comments Should Be Sent To: Harley F. Laing, Acting Chief, Air Branch, Environmental Protection Agency, Region 1, J.F.K. Federal Building, Room 1903, Boston Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Harley F. Laing, Acting Chief, Air Branch, Environmental Protection Agency, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203, (617)223-6883.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, EPA designated areas in each state as non-attainment with respect to the criteria air pollutants. The non-attainment areas in Connecticut designated in those Notices were:

Connecticut

	TSP		CO	O_x
	Primary	Secondary		
AQCR 41		X		X
AQCR 42	X		X	X
AQCR 43	X		X	X
AQCR 44	X			X

Part D of the Clean Air Act requires each state to revise its SIP to meet specific requirements in the non-attainment areas. These SIP revisions were due on January 1, 1979 and must demonstrate attainment of the NAAQS, as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and ozone, no later than December 31, 1987.

On June 27 and December 28, 1979 EPA received revised SIPs for Connecticut for areas designated as not attaining the NAAQS for certain pollutants and described in Notices published in the **Federal Register** on July 10, 1979 (44 FR 40360) and February 13, 1980 (45 FR 9750). On May 1, 1980, EPA received additional material on the revisions which include commitments concerning: the I/M program; total suspended particulate, ozone and carbon monoxide attainment; the new source review program and the public participation program.

All interested persons are advised that the proposed revisions are available for review at the locations listed, and are invited to comment on their approvability. A file of documents explaining EPA's criteria for approval is also available at EPA offices. The proposed notice referred to above will announce the last day for public comment. This public comment period will end not less than 60 days from this date and not less than 30 days from the published date of EPA's proposal for approval or disapproval.

Dated: May 12, 1980.

Robert C. Thompson,

Acting Regional Administrator, Region I.

[FR Doc. 80-15886 Filed 5-22-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1499-1]

Approval and Promulgation of Implementation Plans; Rule Revisions for Five Air Pollution Control Districts in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Rule revisions for the Fresno County, Kern County, Lake County, Monterey Bay Unified and Siskiyou County Air Pollution Control Districts (APCD's) have been submitted to the Environmental Protection Agency (EPA) by the California Air Resources Board for incorporation into the California State Implementation Plan (SIP). The intended effect of these revisions is to update the rules and regulations and to correct deficiencies in the SIP.

These rules have been evaluated and generally found to be in conformance with the requirements of 40 CFR Parts 51 and 58 and EPA policy. Therefore, with certain exceptions, this notice proposes to approve the rule revisions and incorporate them into the SIP. The EPA invites public comments on this rulemaking action.

DATES: Comments may be submitted on or before July 22, 1980.

ADDRESSES: Comments may be sent to:

Regional Administrator, Attn: Air and Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105

Copies of the proposed revisions are available for public inspection during normal business hours at the EPA Region IX office at the above address and at the following locations:

Fresno County Air Pollution Control District, 1246 "L" Street, Fresno, CA 93721

Kern County Air Pollution Control District, P.O. Box 997, 1700 Flower Street, Bakersfield, CA 93302

Lake County Air Pollution Control District, 255 N. Forbes Street, Lakeport, CA 95453
Monterey Bay Unified Air Pollution Control District, 1270 Natividad Road, Salinas, CA 93906
Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097
California Air Resources Board, P.O. Box 2815, 1102 "Q" Street, Sacramento, CA 95814
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105 (415) 556–2938

SUPPLEMENTARY INFORMATION: The California Air Resources Board, as the Governor's designee, submitted the following rules on January 2, 1979:

Fresno County APCD

Rule 110 Equipment Breakdown
Rule 416.1 Agricultural Burning
Rule 519 Emergency Variances

Kern County APCD

Rule 111 Equipment Breakdown
Rule 301 Permit Fees
Rule 519 Emergency Variances

Lake County APCD

Section 434 Exceptions
Section 435 Exception
Section 436 Mechanized Burners
Table V Concentrations and Methods
Table VI Schedule of Fees for Permits

Monterey Bay Unified APCD

Rule 301 Permit Fee Schedules

Siskiyou County APCD

Rule 4.3 Open Fires

The EPA has evaluated all the above rules for conformance with the requirements of 40 CFR Parts 51 and 58 and EPA policy. All the above rules are consistent with these requirements and are therefore proposed to be approved and incorporated into the California SIP, except as follows:

Rules 110(B), *Equipment Breakdown*, and 519, *Emergency Variance*, of the Fresno County APCD and Rules 111(b), *Equipment Breakdown*, and 519, *Emergency Variance*, of the Kern County APCD are proposed to be disapproved. These rules are inconsistent with the requirements of 40 CFR Part 51.22 and EPA Policy (see 42 FR 21472 and 58171) because they lack explicit provisions to assure that the National Ambient Air Quality Standards (NAAQS) will not be exceeded while equipment breakdown periods are in effect.

Section 435, *Exception*, of the Lake County APCD is proposed to be disapproved because a control strategy has not been submitted showing that the proposed increase in particulate emissions due to open burning would not interfere with maintenance of the NAAQS.

Table V, *Concentrations and Methods*, of the Lake County APCD is identical to the old Table V submitted on February 10, 1976, and previously approved at 42 FR 42224. Both tables are now proposed to be disapproved because they permit the use of "any equivalent" measurement technique. This is inconsistent with 40 CFR Part 58 which requires that the EPA approve all alternate measurement techniques.

Rule 4.3, Section 2, *Open Fires*, of the Siskiyou County APCD is proposed to be disapproved because it could allow increased emissions and no control strategy demonstration has been submitted to show that these emissions would not interfere with maintenance of the NAAQS.

The State also submitted regulations concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on January 2, 1979, for the Kern County APCD. These NSPS and NESHAPS regulations implement Sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in a State Implementation Plan under Section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed in determining whether to delegate authority to implement and enforce the NSPS and NESHAPS regulations in the APCD under the appropriate provisions of Sections 111 and 112. Announcement of such delegation would appear in a separate **Federal Register** notice.

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove rules submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth these revisions, including rule deletions caused thereby, as proposed rulemaking and advises the public that interested persons, may participate by submitting written comments to the Region IX Office. Comments received on or before 60 days after publication of this notice will be considered. Comments received will be available for public inspection at the EPA Region IX Office and the EPA Public Information Reference Unit.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Parts 51 and 58. EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

Authority: Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).

Dated: May 13, 1980.

Sheila M. Prindiville,

Acting Regional Administrator.

[FR Doc. 80–15887 Filed 5–22–80; 8:45 am]

BILLING CODE 6560–01–M

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40 CFR Part 52

[FRL 1498–8]

Notice of Proposed Rulemaking for the State of Oregon

AGENCY Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this Notice is to invite public comment on EPA's proposed approval of revisions to the State of Oregon's program for regulating the open burning of grass seed fields.

The State of Oregon Department of Environmental Quality (DEQ) submitted to EPA on April 22, 1980 proposed revisions to the field burning rules which are presently enforceable as part of the Oregon State Implementation Plan (SIP). Also submitted were amendments to applicable Oregon statutes and revisions to the Field Burning Smoke Management Operational Guidelines.

The proposed revision would allow an increase in the number of acres to be open burned from the current limit of 180,000 acres to 250,000 acres per year. The revision also imposes additional controls on the methods of burning and tightens the criteria under which the DEQ will allow burning to occur.

DATE: Comments will be accepted up to June 23, 1980.

ADDRESSES: The Oregon submittal may be examined during normal business hours at the following locations:

Central Docket Section, Library System Branch, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460
Library, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101
State of Oregon, Department of Environmental Quality, 522 S.W. 5th

Avenue, Yeon Building, 4th Floor, Portland, OR 97207

COMMENTS SHOULD BE ADDRESSED TO: Laurie M. Kral, Air Program Branch, M/S 629, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442–1226, FTS 399–1226.

FOR FURTHER INFORMATION CONTACT: George C. Hofer, Air Programs Branch, M/S 625, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442–1125, (FTS) 399–1125.

SUPPLMENTARY INFORMATION:

Background

The open burning of grass seed fields in the State of Oregon has been recognized as a very sensitive and complex air pollution problem for a number of years. EPA's involvement in a control program for Oregon open field burning dates from 1972. In May 1972, the Administrator of EPA approved the Oregon State Implementation Plan (SIP) which had been submitted to EPA in accordance with Section 110 of the Clean Air Act. Included in that plan were Oregon Revised Statutes, 449.930 through 449.943, Field Burning, and a control strategy for total suspended particulate (TSP) which called for a total ban on open field burning in the Willamette Valley as of January 1, 1975.

The 1975 session of the Oregon Legislature, however, amended the applicable statute to eliminate the total ban and to replace it with a program to phase down the number of acres burned each year so that by 1978 and each year thereafter no more than 50,000 acres could be open burned. These legislative changes, as reflected in administrative rules which substituted a phase down program for a total ban of open field burning, were submitted to EPA on August 1, 1975 and February 17, 1976 as proposed revisions to the Oregon SIP. After determining that these revisions met the requirements of Section 110 of the Clean Air Act (hereafter referred to as the Act) and EPA's public participation provisions (40 CFR Part 51) the Administrator approved the revisions on April 18, 1977.

In 1977, the Oregon Legislature again amended the State statute regarding field burning. The major changes included: (1) Increasing the maximum number of acres allowed to be burned to 195,000 in 1977 and 180,000 in 1978 and leaving it up to the Environmental Quality Commission (EQC) to determine the number of acres to be burned in subsequent years; (2) Changing the language of the previous statute so that the EQC must authorize the maximum allowable acreage "unless the EQC finds after hearing that other reasonable and economically feasible alternatives to the practice of annual open field burning have been developed" (ORS 468.475). Previous wording of the statute allowed maximum acreage to be authorized "only if" the EQC found that reasonable alternatives to open burning were not available.

Thereafter, on July 15, 1977 the EQC amended the state administrative rules OAR, 340–26–005 through 26–030, to comply with the 1977 statute. These rules were then submitted to EPA for consideration as a proposed SIP revision on October 6, 1977. EPA reviewed the amended rules and determined that they did not meet either the substantive or the procedural requirements of the Act and therefore would have to be disapproved.

On January 27, 1978 EPA informed the State of Oregon of its findings and provided the State an opportunity to correct the noted procedural and substantive deficiencies. The DEQ decided not to correct the proposed SIP revision prior to the 1978 burning season, but opted instead to develop an interim control strategy for the 1978 field burning season. The EQC approved a one-year interim control strategy, which in conjunction with a number of additional control measures and a comprehensive study, provided for the burning during the 1978 burning season of up to 180,000 acres of grass fields. This compromise between interested parties, which included the Oregon Seed Council, resulted in the recorded burning of approximately 152,000 acres during the 1978 season.

During the above noted SIP revision activity, EPA issued a Notice of Violation (NOV) to the State of Oregon for violation of its SIP provisions during the 1977 field burning season by permitting the burning of 171,500 acres in the Willamette Valley, substantially in excess of the 95,000 acre SIP limitation approved by EPA in April 197..

The DEQ, following its statutory mandate, again submitted to EPA on May 14, 1979 a proposed revision to the Oregon SIP which was adopted by the EQC on December 15, 1978. This proposed SIP revision for field burning also complied with the 1977 statute but included a number of additional control measures to further minimize the impact of field burining. On June 28, 1979 DEQ resubmitted to EPA its proposed SIP revision as amended on May 25, 1979. These amendments were made in response to several issues raised by EPA staff subsequent to EPA's receipt of the May 14, 1979 submittal. In an associated action, on June 29, 1979, the EQC adopted temporary rules with respect to field burning (OAR 340–26–005, 015). These temporary rules were submitted to EPA on July 5, 1979 as amendments to the June 28, 1979 submittal.

In a SIP-related matter, on July 17, 1979, EPA issued a NOV to the State of Oregon for violation of the prohibition in the SIP against the issuance of permits for more than 50,000 acres during the 1979 field burning season. Records indicate that approximately 153,000 acres were burned during the 1979 field burning season, substantially in excess of the sip allowable.

On July 31, 1979 Governor Victor Atiyeh citing Section 110(g)(1) of the Clean Air Act, signed Executive Order 79–14. The order was intended to suspend subsection (2)(g) of ORS 468.475(g) of the federally aproved Oregon SIP which placed a 50,000 acre limitation upon open field burning. The temporary emergency suspension issued by the Governor failed to meet the procedural requirements of Section 110(g) of the Act and was therefore invalid on its face.

On August 3, 1979 EPA proposed in the **Federal Register** approval of the Oregon submittal (44 FR 45647). However, EPA noted a number of substantive concerns regarding the technical support documents for the proposed revision which were submitted to EPA at that time. Additionally, EPA raised a number of concerns with the proposed field burning rules themselves. Further, EPA identified procedural problems associated with the State submittal. EPA noted in the initial **Federal Register** proposal that these various concerns made it difficult to determine whether the proposed SIP relaxation would satisfy all of the applicable requirements of the Act.

In the August 3, 1979 proposal (44 FR 45649), EPA suggested steps which the State of Oregon could explore to remedy the problems noted by EPA. The State followed these suggestions and on August 31, 1979 and September 21, 1979 held public hearings to readopt the June 29, 1979 amendments as permanent and adopt new amendments as necessary to correct the identified problems. These amendments were submitted to EPA on September 13, 1979 and October 10, 1979, respectively. Revised technical support documents were also submitted to EPA on September 13, 1979.

Subsequently, on January 8, 1980, EPA published a reproposal notice in the **Federal Register** (45 FR 1643). In this notice, EPA indicated that the September 13, 1979 and October 10, 1979 submittals had adequately resolved all

but one of the concerns. EPA further indicated that the remaining concern would be resolved with the immediate submission of smoke management program operational guidelines and the submission, by July 1980, of the SIP attainment strategy for the Eugene-Springfield TSP nonattainment area. The Federal Register notice invited public comment on EPA's proposed approval and indicated that final action would be taken upon receipt of the smoke management program operational guidelines.

On March 11, 1980, DEQ submitted the operational guidelines as requested by EPA. Subsequently, on April 18, 1980, the Administrator approved the revisions (45 FR 26327).

In 1979, the Oregon Legislature again amended the State statute regarding field burning. The major change was to increase the number of acres allowed to be burned in 1980 and thereafter from 180,000 to 250,000.

On January 18, 1980 the EQC amended the state administrative rules OAR 340–26–005 through 26–030 to comply with the 1979 statute. These rules were then submitted to EPA as a proposed SIP revision on January 23, 1980. EPA reviewed the proposed revision and determined that it did not meet the substantive requirements of the Act and therefore would have to be disapproved.

On March 10, 1980 EPA informed the State of Oregon of its findings and provided the State with an opportunity to withdraw the submittal before EPA initiated a disapproval action. The DEQ requested that EPA not begin a disapproval action and indicated that the State would develop and submit a proposed SIP revision to replace the Janauary 23, 1980 submittal.

In a concerted effort by the DEQ, City of Eugene and Oregon Seed Council, a replacement SIP revision was developed which was intended to address EPA's concerns. A new technical support document was prepared, the smoke management operational guidelines were greatly expanded and revised, and on April 18, 1980 the EQC amended the state rules. Thereafter, on April 22, 1980 the State submitted to EPA a new proposed SIP revision to replace the January 23, 1980 submittal.

Discussion

The proposed revision consists of Oregon Administrative Rules, Chapter 340, Division 26, Sections 005 through 030 as adopted on January 18, 1980 and amended on April 18, 1980; Oregon Revised Statutes, Chapter 468.450 through 468.495 as amended by the 179 Oregon Legislative Assembly; and revised Field Burning Smoke Management Program Operations Guidelines.

The major changes which would result from the proposed revision are to:

(1) increase the number of acres which are allowed to be burned from 180,000 to 250,000 per year;

(2) establish a daily maximum number of acres which are allowed to be burned in the South Willamette Valley;

(3) restrict burning based on existing and predicted air quality in areas impacted by burning; and

(4) clarify the requirements for use of specific burning techniques.

In addition, the rules were recognized and clarified, and the Smoke Management Program Operational Guidelines were revised to reflect the rule changes and greatly expanded to provide further detail on the currrent program.

The expected impace on air quality was evaluated in the report "An Analysis of Particulate Air Quality Impact in the Willamette Valley Resulting from Increased Field Burning", March 1980. This analysis was performed jointly by the DEQ, City of Eugene and Oregon Seed Council and was submitted to EPA in support of the proposed SIP revision. The analysis concluded that the increased burning would not cause or significantly contribute to violations of the National Ambient Air Quality Standards for Total Suspended Particulates (TSP) or the Class II Prevention of Significant Deterioration (PSD) increments for TSP. However, the increased burning would consume 54 percent of the available 24—hour Class II PSD increment for TSP on northerly wind burning days with general quota releases and 73 percent of the available 24-hour Class II PSD increment for TSP on sourtherly wind burning days with general quota releases.

Because of the unusual nature of field burning and the significant amount of PSD increment consumed by the increased burning, EPA proposes that the following procedure be used by an applicant for a PSD permit to determine the remaining increment available:

(1) Using the meteorological data from the proposed source's impact analysis, determine, with assistance from DEQ, per the field burning rules and smoke management operational guidelines:

(a) those days which would accommodate general quota releases;

(b) the general area of burning on such days, and

(c) the probable area of impact downwind from such burning.

(2) Identify those general quota release days for which the area of significant air quality impact of proposed source is impacted by field burning (i.e. downwind of burning).

(3) For those days with field burning impact, the remaining increment in the vicinity of the proposed source is 46 percent of the 24-hour Class II increment for TSP under northerly winds and 27 percent of the 24-hour Class II increment for TSP under southerly winds.

It should be recognized that this is an interim procedure and that the increment consumed by increased field burning in the vicinity of a proposed source may and should be reevaluated as more sophisticated analysis techniques become available. However, until such time, the above technique is proposed as the method for assessing the remaining increment available for accommodating a new or modified major stationary source subject to PSD requirements.

Proposed Action. The proposed SIP revision satisfies the procedural and substantive requirements of the Act. Therefore, EPA proposes to approve the revision as submitted.

Call for Comments. EPA solicits comments on the proposed revision to the Oregon SIP, EPA's proposed approval of the revision, and EPA's proposed procedure for assessing the increment available to a source subject to PSD review.

Authority: Section 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502).

Dated: May 19, 1980.

Donald P. Dubois,

Regional Administrator.

[FR Doc. 80–15888 Filed 5–22–80; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–5825]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426—1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Room 5150, 451 Seventh Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Birmingham, Jefferson County.	Village Creek	Just upstream of Avenue "W"	*523
			Just upstream of 16th Street	*551
			Just upstream of Vanderbilt Road	*578
			Just downstream of 85th Street	*651
		Fivemile Creek (Fivemile Creek Basin).	Confluence of Tarrant Springs Branch	*591
			Just downstream of Point Road	*708
		Tarrant Springs Branch	Just downstream of Killough Road	*636
			Just downstream of Carson Road	*712
		Dry Creek (Fivemile Creek Basin)	Just downstream of Old Springville Road	*748
		Unnamed Creek 23	Just downstream of Lawson Road	*617
		Camp Branch	Just downstream of Birmingham Road	*509
		Black Creek (Village Creek Basin)	Just upstream of Old Pratt Highway	*521
			Just upstream of U.S. 78	*536
			Just downstream of Cherry Avenue	*544
		Unnamed Creek 31	Just upstream of Louisville and Nashville Rail	*581
			Just upstream of Airport Highway	*599
		Unnamed Creek 32	Just upstream of 51st Street	*606
			Just downstream of 3rd Avenue	*629
			Just downstream of (66th Street) Brussels Avenue	*653
		Unnamed Creek 34	Just upstream of the lower road entering Bays Industrial School	*678
		Valley Creek	Just downstream of Seaboard Coastline Railroad	*511
			Just downstream of 18th Street southwest	*541
		Unnamed Creek 48	Just upstream of Cotton Avenue	*562
			Just upstream of Southern Railway	*573
			Just downstream of 6th Avenue S.W	*576
		Unnamed Creek 49	Just downstream of 3rd Street South	*575
			Just downstream of 6th Avenue South	*588
		Nabors Branch	Just downstream of 24th Street	*530
			Just upstream of Mims Street	*550
			Just upstream of 16th way	*562
	Maps available at City Hall, 710 North 20th Street, Birmingham, Alabama 35203.			
	Send comments to Mayor Richard Arrington or Mr. John Duncan, Acting City Engineer, City Hall, 710 North 20th Street, Birmingham, Alabama 35203.			
Arkansas	City of Strong, Union County	Lapile Creek	Approximately 200 feet downstream of New London Road	*105
	Maps available at City Hall, Pine Street, Strong, Arkansas 71765.			
	Send comments to Mayor Mayo Stevens or Ms. Annett Pagan, Treasurer, City Hall, Pine Street, Strong, Arkansas 71765.			
Illinois	(C), Lake Forest, Lake County	Skokie River	Just upstream Old Elm Road	*651
			Just downstream Westleigh Road	*657
			About 300 feet downstream Deerpath Road	*661
			About 1,900 feet upstream Chicago and North Western railroad (at corporate limits).	*669
		Middle Fork, North Branch, Chicago River.	Downstream corporate limit	*659
			Just downstream Everett Road	*663
			Just downstream Kennedy Road	*668
			Upstream corporate limit	*669
		Lake Michigan	Shoreline	*584
	Maps available at Assistant Engineer's Office, City Hall, 220 E. Deerpath, Lake Forest, Illinois.			
	Send comments to Honorable Frank Waldeck, Mayor, City of Lake Forest, City Hall, 220 E. Deerpath, Lake Forest, Illinois 60045.			
Iowa	(C), Fairfield, Jefferson County	Kaghaghee Creek	About 120 feet downstream of Park Avenue at downstream corporate limits.	*696
			About 2,640 feet upstream of Park Avenue	*706
			About 140 feet downstream of D Street	*714
			About 100 feet upstream of D Street	*726
			About 1,300 feet upstream of D Street	*727
		Crow Creek	At downstream corporate limit	*689
			Approximately 150 feet upstream of confluence of Kaghaghee Creek	*692
			Just upstream of U.S. Highway 34	*700

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 200 feet downstream of the Burlington Northern Railroad.	*704
			Approximately 1,100 feet upstream of the Burlington Northern Railroad.	*706
			Just downstream of Salina Road	*709
			Just upstream of Salina Road	*714
			Just downstream of B Street	*715
			Just upstream of B Street	*720
			Just upstream of Main Street	*721
			Just downstream of State Highway 1	*722
			Just upstream of State Highway 1	*725
			At upstream corporate limits	*725
	Maps available at City Hall, P.O. Box 850, Fairfield, Iowa.			
	Send comments to Honorable Bob Rasmussen, Mayor, City of Fairfield, City Hall, P.O. Box 850, Fairfield, Iowa 52556 to the attention of Mr. Bob Moore, Director of Public Works.			
Iowa	(Uninc.), Lee County	Dry Creek	At City of Fort Madison northern corporate limits	*572
			About 2,200 feet upstream of City of Fort Madison corporate limits	*584
		Mississippi River	Just upstream City of Keokuk corporate limits	*519
			Upstream county boundary	*531
	Maps available at the Lee County Engineer's Office, 17 Avenue F, Fort Madison, Iowa.			
	Send comments to Mr. Charles J. Krogmeier, Chairman of the Board of Supervisors, Lee County, County Office Building, 933 Avenue H, Fort Madison, Iowa 52627 to the attention of Mr. Thomas E. Nelson, County Engineer.			
Iowa	(C), Montrose, Lee County	Mississippi River	Within corporate limits	*522
		Horton Creek	About 1,200 feet downstream Second Street	*522
			Just downstream Second Street	*523
			Just upstream Second Street	*526
			About 1,940 feet upstream Second Street	*533
		Horton Creek Tributary	Mouth at Horton Creek	*526
			Just downstream 5th Street	*527
			Just upstream 5th Street	*530
			Just downstream 7th Street	*533
	Maps available at City Hall, Montrose, Iowa.			
	Send comments to Honorable Ralph St. Clair, Mayor, City of Montrose, Iowa 52639.			
Kansas	(C), Perry; Jefferson County	Delaware River	Within corporate limits	*850
		Kansas River	Just southeast of Ceder Street and Union Pacific Railroad	*849
			Just south of Union Pacific Railroad, about 1,300 feet east of Delaware River.	*850
	Maps available at City Hall, Perry, Kansas.			
	Send comments to Honorable James L. Abel, Mayor, City of Perry, Perry, Kansas 66073.			
Kentucky	City of Sadieville, Scott County	Eagle Creek	Just upstream of Spoon Branch Road	*779
			Just downstream of Corporate Limits	*779
			Just upstream of Route 32	*781
	Maps available at City Hall, Main Street, Sadieville, Kentucky 40370.			
	Send comments to Mayor Ken Wilson or Mr. Herman Fields, Councilman, City Hall, Main Street, Sadieville, Kentucky 40370.			
Kentucky	City of Stamping Ground, Scott County.	Locust Fork	Just upstream of Main Street	*761
	Maps available at City Hall, Stamping Ground, Kentucky 40379.			
	Send comments to Mayor Donald Thompson, or Ms. Louise Poindexter, Clerk-Treasurer, City Hall, Stamping Ground, Kentucky 40379.			
Maine	(T), Brownfield, Oxford County	Shepard's River	At game management area boundary	*376
			Approximately 300 feet upstream from State Route 113	*381
			Approximately 800 feet downstream from Perry Mountain Road	*412
			Just upstream from Perry Mountain Road	*431
			Just downstream from River Road	*440
			Just upstream from River Road	*448
			Just upstream from old county road plank bridge	*482
			Approximately 12,200 feet upstream from old county road plank bridge.	*516
		Saco River	At southeastern corporate limits	*366
			Approximately 400 feet downstream of the confluence of Tenmile River.	*371
			Approximately 1 mile upstream of State Route 160	*376
			At confluence with Pleasent Pont	*378
	Maps available at Town Selectmen's Office, Town Office, Brownfield, Maine.			
	Send comments to Mr. Ronald Holt, First Selectman, Town of Brownfield, Town Office, Brownfield, Maine 04010.			
Michigan	(C), Plymouth Wayne County	Tonquish Creek	Just upstream Ann Arbor Road	*700
			Just upstream Harding Stree	*710
			Just downstream of Sheldon Road	*736
		South Branch Tonquish Creek	At mouth at Tonquish Creek	*700
			Just upstream Main Street	*707
			Just upstream Harvey Street	*708
			Just downstream of Sheldon Road	*717
	Maps available at City Hall, 201 S. Main Street, Plymouth, Michigan.			
	Send comments to Honorable Mary B. Childs, Mayor, City of Plymouth, City Hall, 201 S. Main Street, Plymouth, Michigan 48170.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Michigan	(C), Sterling Heights, Macomb County.	Clinton River	Just upstream of Hayes Road	*602
			About 200 feet upstream of Kleino Road	*606
			About 250 feet upstream of Earl Memorial Highway	*614
			Just downstream of Van Dyke Road	*624
		Red Run Drain	Just downstream of Utica Road	*602
			Just upstream of 16 Mile Road	*605
			Just downstream of 14 Mile Road	*610
		Plum Brook	Just upstream of Schoenherr Road	*603
			Just upstream of Van Dyke Road	*615
			About 200 feet upstream of Mound Road	*624
			Just downstream of Golf Course Weir	*632
			Just upstream of 19 Mile Road	*643
			Just downstream of Hall Road	*677
		Gibson Drain	Mouth at Plum Brook	*632
			Just downstream of Dequinder Road	*642
		Chrissman Drain	Just downstream of culvert	*622
			Just upstream of culvert	*623
			Just upstream of Mound Road	*633
			Just downstream of State Highway 59	*648
		Chrissman Drain (Old Channel)	Mouth at Plum Brook	*621
			At divergence from Chrissman Drain	*623
		Chrissman Drain (Overland Flow at 19 Mile Road).	At confluence with Chrissman Drain	*635
			Just upstream of 19 Mile Road	*636
		Big Beaver Creek	Just upstream of Conrail	*611
			Just downstream of Dequinder Road	*630
		Spencer Drain	Mouth at Big Beaver Creek	*623
			Just downstream of Dequinder Road	*627
		Sterling Relief Drain	Mouth at Red Run Drain	*606
			About 3,600 feet upstream of Dodge Park Road	*606
		Shanahan Drain	Mouth at Big Beaver Creek	*626
			About 1,200 feet upstream of 16 Mile Road	*632
		Phiel Drain	Mouth at Clinton River	*607
			Just downstream of Dodge Park Road	*607

Maps available at City Engineer's Office, 400555 Utica Road, Sterling Heights, Michigan.

Send comments to Honorable Anthony Dobry, Mayor, City of Sterling Heights, 400555 Utica Road, Sterling Heights, Michigan 48078 to the attention of Mr. Leonard Hendrick, City Manager.

Minnesota	(Uninc.), Wabasha County	Zumbro River	Approximately 1.6 miles downstream confluence of Silver Spring Creek.	*788
			Approximately 2,400 feet upstream of confluence of Silver Spring Creek.	*797
			Just upstream County Highway 7	*868
			Just downstream Zumbro Lake Dam	*876
		Miller Creek	Just downstream U.S. Highway 61	*681
			Just upstream County Highway 9	*699
			Just upstream Marion Street	*707
			About 3,400 feet upstream confluence of unnamed tributary	*732
		Gilbert Creek	At City of Lake City western corporate limit	*705
			Approximately 200 feet downstream confluence of Sugarloaf Creek	*721
			About 4,600 feet upstream confluence of Sugarloaf Creek	*739
		Sugarloaf Creek	Mouth at Gilbert Creek	*729
			Just downstream of unnamed gravel road at county boundary	*740

Maps available at the Zoning Administrator's Office, Wabasha County Courthouse, Wabasha, Minnesota.

Send comments to Mr. William Holmes, Zoning Administrator, Wabasha County, Wabasha County Courthouse, Wabasha, Minnesota 55981.

Mississippi	City of Starkville, Oktibbeha County.	Sand Creek	Just upstream of West Point Road	*289
		Sand Creek Tributary 1	Just upstream of West Point Road	*290
		Sand Creek Tributary 2	Just upstream of West Point Road	*291
			Just upstream of Trotter Road	*293
		Hollis Creek	Just upstream of Academy Road	*323
			Just downstream of yellowjacket Drive	*335
		Josey Creek Tributary 1	Confluence of Josey Creek Tributary 1 and Josey Creek Tributary 2	*259
		Josey Creek Tributary 2	Just downstream of Reed Road	*268
		Josey Creek Tributary 3	Just downstream of Reed Road	*273
		Glen Creek	Just upstream of Industrial Park Drive	*312
			Just upstream of Lynn Lane	*320

Maps available at City Hall, Lampkin Street, Starkville, Mississippi 39759.

Send comments to Mayor H. P. Davis, Jr., or Mr. Thomas E. Beitch, Vice Mayor, City Hall, Lampkin Street, Starkville, Mississippi 39759.

Missouri	(C), Frontenac, St. Louis County	Two Mile Creek	About 300 feet upstream of Geyer Road	*537
			About 175 feet downstream confluence of North Tributary Two Mile Creek.	*540
			About 200 feet upstream confluence of North Tributary Two Mile Creek.	*544
			At western corporate limits	*552
		Monsanto Sunswept Creek	About 160 feet upstream Glen Abbey	*527
			At northern corporate limits	*531
		Deer Creek	At eastern corporate limits	*518
			Just upstream Lindbergh Boulevard	*523
			Just downstream private road	*524
			Just upstream private road	*526
			Just downstream of Spoede Road	*530
			At western corporate limits	*541

Maps available at 10555 Clayton Road, Frontenac, Missouri.

Send comments to Honorable Morgan B. Lawton, Mayor, City of Frontenac, 10555 Clayton Road, Frontenac, Missouri 63131 to the attention of Mr. Donald J. Rohlfing.

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Missouri	(C), New Haven, Franklin County..	Missouri River	At eastern corporate limits	*502
			At western corporate limits	*505
	Maps available at City Hall, P.O. Box 236, New Haven, Missouri.			
	Send comments to Honorable Thomas McDonald, Mayor, City of New Haven, City Hall, P.O. Box 236, New Haven, Missouri 63068.			
New Hampshire	(C), Manchester, Hillsborough County.	•Merrimack River	Southern corporate limits	*124
			Upstream side of Interstate 193	*128
			Confluence of Piscataquog River	*134
			1,850 feet downstream of Amoskeag Dam	*143
			Just upstream of Amoskeag Dam	*182
			Northern corporate limits	*186
		Piscataquog River	Upstream side of the Frederick E. Everett Turnpike	*135
			Downstream side of Kelley's Falls Dam	*148
			Just upstream of Kelley's Falls Dam	*167
			Western corporate limits	*167
		Great Cohas Brook	Mouth at Merrimack River	*126
			Just upstream Brown Avenue	*145
			Just upstream of Pine Island Pond Dam	*153
			4,500 feetupstream of Pine Island Pond Dam	*156
			2,800 feet downstream of Boston and Maine Railroad	*178
			Upstream side of Boston and Maine Railroad	*188
			Just upstream of South Willow Street	*207
			Just upstream of South Mammoth Road	*210
			Just upstream of Cohas Road	*216
			Downstream side of Canal Avenue Dam	*227
			Just upstream of Canal Avenue Dam	*253
		North Channel Piscataquog River.	Confluence with Merrimack River	*135
			Convergence with Piscataquog River	*135
	Maps available at City Planning Office, City Hall—3rd Floor, 908 Elm Street, Manchester, New Hampshire.			
	Send comments to Honorable Charles R. Stanton, Mayor, City of Manchester, City Hall, 908 Elm Street, Manchester, New Hampshire 03101.			
New Jersey	Haworth (Borough), Bergen County.	Steinals Ditch	Intersection of Steinals Ditch and center of Contant Avenue	*29
			40 feet upstream from center of Haworth Avenue	*42
			40 feet upstream from center of Sunset Avenue	*54
		Kips Brook	40 feet upstream from center of Lake Shore Drive	*28
			50 feet upstream from center of Conrail	*48
			150 feet northeast of intersection at Seneca Trace and Owatenna Street.	*73
		Charlies Creek	Intersection of Charlies Creek and the downstream corporate limit	*78
			Intersection of charlies Creek and center of Delaware Avenue	*87
		Oradell Reservoir	200 feet northwest of intersection of Lake Shore Drive and Sunset Avenue.	*25
	Maps available at Municipal Center, 300 Haworth Avenue, Haworth, New Jersey.			
	Send comments to the Honorable John Johl, 300 Haworth avenue, Haworth, New Jersey 07641.			
New Jersey	Hillsdale (Borough), Bergen County.	Hillsdale Brook	60 feet upstream from center of Everdell Avenue	*48
			Intersection of Hillsdale Brook and the upstream corporate limits	*74
		Holdrum Brook	185 feet southeast of intersection of Baylor Avenue and Kent Road	*56
		Musquapsink Brook	250 feet west of intersection of Hillsdale Court and Ell Road	*108
			20 feet upstream from center of Hillsdale Avenue	*122
			Intersection of Musquapsink Brook and center of Wierimus Lane	*157
		Pascack Brook	70 feet southeast of intersection of Bueno Vista Avenue and Carlyle Place.	*43
			25 feet downstream from center of Patterson Street	*58
			Intersection of Pascack Brook and Church Road	*100
		Tandy Brook	80 feet upstream from center of Saddlewood Drive	*71
			Intersection of Tandy Brook and center of Pascack Road	*98
		Township Brook	60 feet upstream from center of Maple Avenue	*69
	Maps available at Borough Hall, 380 Hillsdale Avenue, Hillsdale, New Jersey.			
	Send comments to the Honorable Alfred Murphy, 380 Hillsdale Avenue, Hillsdale, New Jersey 07642.			
New Jersey	Park Ridge (Borough), Bergen County.	Bear Brook	Intersection of Bear Brook and center of Glen Road	*132
			40 feet downstream from intersection of Bear Brook and Glen Brook Drive.	*268
		Echo Glen Brook	Intersection of Echo Glen Brook and center of Albernon Drive	*241
			40 feet downstream from intersection of Echo Glen Brook and center of Grand Avenue.	*261
		Mill Brook	Intersection of Mill Brook and center of Pascack Road	*136
			80 feet upstream from intersection of Mill Brook and the center of Fifth Street.	*189
			60 feet upstream from intersection of Mill Brook and Spring Valley Road.	*257
		Holdrum Brook	Intersection of Holdrum Brook and center of Prospect Avenue	*67
		Hillsdale Brook	30 feet upstream from intersection of Hillsdale Brook and the center of Sibbald Drive.	*92
			Intersection of Hillsdale Brook and center of Park Avenue	*138
			Intersection of Hillsdale Brook and center of New Street	*157
		Pascack Brook	50 feet upstream from intersection of Pascack Brook and center of Park Avenue.	*115
			Intersection of Pascack Brook and Electric Lake Dam	*137
	Maps available at Municipal Building, 55 Park Avenue, Park Ridge, New Jersey.			
	Send comments to the Honorable Donald Gelnaw, 55 Park Avenue, Park Ridge, New Jersey 07656.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	River Vale (Township), Bergen County.	Oradell Reservoir	200 feet east of the intersection of Marshall Road and Cambridge Road.	*25
		Hackensack River	100 feet upstream from center of Westwood Avenue	*30
			50 feet upstream from center of Old Tappan Road	*40
			Intersection of Hackensack River (Lake Tappan Reservoir) and center of Poplar Road.	*56
		Pascack Brook	100 feet upstream from center of Brookside Avenue	*32
			100 feet downstream from center of Demarest Avenue	*42
		Holdrum Brook	50 feet upstream from center of Piermont Avenue	*43
			150 feet upstream from center of Prospect Avenue	*76
			75 feet upstream from center of Rolling Hills Drive	*139
		Cherry Brook	25 feet upstream from center of Poplar Road	*48
			Intersection of Cherry Brook and center of Orangeburgh Road	*107
			50 feet downstream from center of Blue Hill Road	*168
		Rivervale Brook	100 feet upstream from center of Rivervale road	*47
			50 feet upstream from center of Ridge Road	*87
	Maps available at Town Hall, 628 River Vale Road, River Vale, New Jersey.			
	Send comments to the Honorable Stanley R. Moore, 628 River Vale Road, River Vale, New Jersey 07675.			
New Jersey	Woodcliff Lake (Borough), Bergen County.	Pascack Brook	Intersection of Pascack Brook and center of Woodcliff Avenue	*100
		Musquapsink Brook	80 feet upstream from center of Wierimus Lane	*159
			120 feet downstream from center of Saddle River Road	*227
		Hillsdale Brook	50 feet upstream from center of Prospect Avenue	*78
		Bear Brook	40 feet upstream from center of Pascack Road	*109
			200 feet northeast of intersection of Rose Avenue and Glen Road	*183
			85 feet upstream from center of Spring Valley Road	*270
		Reservoir Brook	Intersection of Reservoir Brook and center of Woodcliff Avenue	*154
	Maps available at 188 Pascack Road, Woodcliff Lake, New Jersey.			
	Send comments to the Honorable Robert L. Ellis, 188 Pascack Road, Woodcliff Lake, New Jersey.			
Ohio	(C), Akron, Summit County	Cuyahoga River	At the northern corporate limit, (about 3,750 feet downstream of Bath Road).	*732
			About 800 feet upstream of the Chessie System railroad crossing	*740
			At the confluence of Mud Brook	*744
			About 160 feet upstream of Akron Peninsula Road	*751
			About 5,650 feet upstream of Akron Peninsula Road	*757
		Little Cuyahoga River	Just upstream of Memorial Parkway	*775
			Just upstream of Cuyahoga Street	*811
			About 1,200 feet upstream of Home Avenue	*936
			About 140 feet downstream of Hazel Street	*946
			Just upstream of Hazel Street	*948
			About 500 feet upstream of Bank Street	*957
			Just downstream of the dam near Kent Street	*962
			Just upstream of the dam near Kent Street	*974
			About 100 feet upstream of South Case Avenue	*980
			Just upstream of the weir north of the Goodyear Plant	*986
			Just downstream of the dam near Kelly Avenue	*992
			Just upstream of the dam near Kelly Avenue	*1,000
			About 1,600 feet upstream of Seiberling Street, below the dam	*1,006
			At the confluence of Springfield Lake Outlet	*1,009
		Hands Lateral	At the confluence with Schocalog Run	*976
			At the confluence of Frank Lateral	*977
		Frank Lateral	Just upstream of Mull Avenue	*979
			Just upstream of the culvert, near Auten Drive	*985
			Just upstream of Ohio Edison Drive	*985
		Mud Run	At the southern corporate limit (about 780 feet downstream of Swinehart Road.	*969
			About 1,500 feet upstream of Morse Street	*973
		Ohio and Erie Canal (North of Summit Lake.	Just downstream of Cedar Street	*967
			Just upstream of Bartges Street	*968
			Just upstream of South Street	*968
		Ohio and Erie Canal (South of Summit Lake).	At downstream corporate limits	*967
			Just downstream of Kenmore Boulevard	*968
		Roosevelt Ditch	Mouth at Little Cuyahoga River	*1,033
			Just upstream of the Akron, Canton and Youngstown Railroad	*1,041
			Just upstream of Gilchrist Road	*1,050
			At confluence of West Branch Roosevelt Ditch	*1,099
			About 250 feet upstream of Eastwood Avenue	*1,108
		West Branch Roosevelt Ditch	About 200 feet upstream Eastwood Avenue	*1,106
		Springfield Lake Outlet	At confluence with Little Cuyahoga River	*1,009
			About 400 feet upstream of confluence with Little Cuyahoga River	*1,010
			At the confluence of Haley's Ditch	*1,015
			Just upstream of Massillon Road	*1,024
			About 200 feet upstream of Wedgewood Drive	*1,060
			About 500 feet upstream of Triplett Boulevard	*1,070
			At the southern corporate limits	*1,071
		Yellow Creek	Within corporate limits	*735
	Maps available at City Hall, Akron, Ohio.			
	Send comments to Honorable Roy Ray, Mayor, City of Akron, City Hall, Akron, Ohio 44308.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ohio	(V), Boston Heights, Summit County.	Brandywine Creek	Approximately 600 feet upstream from northern corporate limits	*971
			Approximately 1,200 feet downstream from Hines Hill Road	*975
			Just downstream from Hines Hill Road	*980
	Maps available at Office of the Village Clerk, 45 E. Boston Mills Road, Hudson, Ohio.			
	Send comments to Mr. Robert R. Riedel, Village Clerk, Village of Boston Heights, 45 E. Boston Mills Road, Hudson, Ohio 44236.			
Ohio	(C), Eastlake, Lake County	Chagrin River	Mouth at Lake Erie	*576
			About 1.0 mile downstream of Lake Shore Boulevard	*577
			Approximately 0.3 mile downstream from Lake Shore Boulevard	*581
			Approximately 0.1 mile downstream from Lake Shore Boulevard	*583
			Approximately 0.7 mile upstream from Lake Shore Boulevard	*587
			Approximately 0.5 mile downstream from Eastlake easternmost corporate limit.	*591
			Approximately 160 feet downstream from Eastlake easternmost corporate limit.	*594
	Maps available at City Hall, 35150 Lake Shore Boulevard, Eastlake, Ohio.			
	Send comments to Honorable Morris Becker, Mayor, City of Eastlake, City Hall, 35150 Lake Shore Boulevard, Eastlake, Ohio 44094.			
Ohio	(V), Fredericktown, Knox County	North Branch Kokosing River	Approximately 750 feet downstream of Montgomery Road	*1,059
			Just upstream of Mill Street	*1,067
			At upstream corporate limit approximately 0.7 mile upstream of corporate limit.	*1,070
	Maps available at Village Hall, 2 East Sandusky Street, Fredericktown, Ohio.			
	Send comments to Honorable J. Boyd Blackburn, Mayor, Village of Fredericktown, Village Hall, 2 East Sandusky Street, Fredericktown, Ohio 43019.			
Ohio	(C), Independence, Cuyahoga County.	Cuyahoga River	At downstream corporate limit	*598
			Just downstream of Chessie System	*600
			Just upstream of Chessie System	*602
			Just downstream of Rockside Road	*606
		Tributary 2	Just upstream of Brecksville Road	*806
			Just downstream of Meadowbrook Boulevard	*834
			Just upstream of Elmwood Park entrance	*844
			Just downstream of Interstate 77	*858
	Maps available at City Hall, 6675 Brecksville Road, Independence, Ohio.			
	Send comments to Honorable Winfred Wisnieski, Mayor, City of Independence, City Hall, 6675 Brecksville Road, Independence, Ohio 44131.			
Ohio	(C), Marietta, Washington County	Ohio River	Southwestern corporate limit	*615
			Southeastern corporate limit	*616
		Muskingum River	At mouth	*615
			Northern corporate limit	*615
		Duck Creek	At mouth	*616
			Northern corporate limit	*616
	Maps available at City Hall, 301 Putnam Street, Marietta, Ohio.			
	Send comments to Honorable George F. Cranston, Mayor, City of Marietta, City Hall, 301 Putnam Street, Marietta, Ohio 45750.			
Ohio	(V), Valley View, Cuyahoga County.	Cuyahoga River	At downstream corporate limit	*602
			Just downstream of Hillside Road	*613
			Just upstream of Hillside Road	*616
			Just downstream of Pleasant Valley Road	*620
		Tinkers Creek	At confluence with Cuyahoga River	*619
			About 9,950 feet upstream of confluence with Cuyahoga River	*646
	Maps available at Village Hall, 6848 Hathaway Drive, Valley View, Ohio.			
	Send comments to Honorable Authur Westfall, Mayor, Village of Valley View, Village Hall, 6848 Hathaway Drive, Valley View, Ohio 44125.			
Ohio	(Uninc.), Washington County	West Fork Duck Creek	About 3,200 feet downstream of unnamed bridge, northwest of Elba	*665
			About 500 feet upstream of unnamed bridge, northwest of Elba	*668
			Downstream corporate limits of Macksburg	*676
			Just upstream of Broad Street in Macksburg	*679
			Upstream corporate limits of Macksburg	*680
		Little Hocking River	Just downstream of State Route 339	*606
			About 100 feet downstream of Township Route 289	*607
			Just upstream of Township Route 289	*609
		East Fork Duck Creek	Downstream corporate limits of Lower Salem	*652
			Upstream corporate limits of Lower Salem	*657
		Duck Creek	Mouth of Marietta	*616
			Upstream Marietta corporate limits	*616
		Muskingum River	Just upstream of Marietta corporate limits	*615
			Downstream corporate limits of Lowell, Ohio	*623
			Just downstream of the Lowell Lock and Dam No. 3	*624
			Downstream corporate limit of Beverly, Ohio	*637
			Just downstream of the Beverly Lock and Dam No. 4	*638
			About 4 miles downstream of Lock and Dam No. 5	*640
			About 3000 feet downstream of Locke and Dam No. 5	*643
			Just upstream of Lock and Dam No. 5	*645
		Ohio River	Downstream county boundary	*604
			Just upstream of Neal Island	*611
			About 9 miles downstream of St. Mary's Bridge	*620
			Just upstream of St. Mary's Bridge	*626
			Just downstream of Grandview Island	*631
			Upstream county boundary	*632
	Maps available at Washington County Courthouse Annex, Marietta, Ohio.			
	Send comments to Mr. William Schaefer, President of County Commissioners, Washington County, Washington County Courthouse Annex, Marietta, Ohio 45750.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Oklahoma	Town of Grove, Delaware County.	Spring Branch	Just upstream of Main Street	*762
			Just upstream of Delaware Avenue	*768
		North Tributary to Spring Branch	Just downstream of Madison Avenue	*779
	Maps available at City Hall, 104 West 3rd Street, Grove, Oklahoma 74344.			
	Send comments to Ms. Merith Mound, City Clerk, City Hall, 104 West 3rd Street, Grove, Oklahoma 74344.			
Oklahoma	Town of North Enid, Garfield County.	Skeleton Creek	Approximately 50 feet downstream of Purdue Avenue	*1,237
			Just upstream of Purdue Avenue	*1,244
			Just upstream of Chicago Rock Island and Pacific Railroad	*1,245
	Maps available at Mayor's Home, Route 6, Box 71, Enid, Oklahoma 73701.			
	Send comments to Mayor Jim Powell, Route 6, Box 71, Enid, Oklahoma 73701.			
Oklahoma	City of Sulphur, Murray County.	Rock Creek	Just upstream of Oklahoma State Highway 7 (Broadway Avenue)	*949
			Just downstream of U.S. Highway 177 (West 1st Street)	*960
		West Tributary of Rock Creek	Approximately 150 feet upstream of Oklahoma State Highway 7 (Broadway Avenue).	*948
	Maps available at City Manager's Office, City Hall, 400 W. Muskogee, Sulphur, Oklahoma 73086.			
	Send comments to Robert H. Collings, City Manager, City Hall, 400 W. Muskogee, Sulphur, Oklahoma 73086.			
Oregon	Medford (City), Jackson	Bear Creek	50 feet downstream from center of McAndrews Road	*1,330
			Intersection of creek and center of Jackson Street	*1,345
			75 feet upstream from center of Barnett Road	*1,386
		Lazy Creek	Intersection of Black Oak Drive and Siskiyou Boulevard	*1,448
		Larson Creek	Intersection of creek and center of Morrison Avenue	*1,478
		Unnamed Tributary to Larson Creek.	Confluence of creek and Larson Creek	*1,500
		Crooked Creek	40 feet downstream from center of Garfield Road	*1,431
		Lone Pine Creek	Intersection of creek and center of Crater Lake Avenue	*1,350
	Maps available at Planning Department, Mr. Jim Eisenhart, 411 W. 8th Street, Medford, Oregon.			
	Send comments to the Honorable Al Densmore, City Hall, 411 W. 8th Street, Medford, Oregon.			
South Carolina	Town of Ravenel, Charleston County.	Middle Branch	Just upstream of Miley Hill Road	*15
			Just downstream of U.S. Highway 165	*27
			Just upstream of U.S. Highway 165	*30
		Atlantic Ocean (Backwater flooding along Middle Branch and Tributary to Wallace).	On Tributary to Wallace River just downstream of U.S. Highway 17	*7
			On Tributary to Middle Branch just upstream of U.S. Highway 17	*8
	Maps available at Town Hall, P.O. Box 88, Route 1, Ravenel, South Caroline 29470.			
	Send comments to Mayor Raymond Williams or Ms. Betty Gainey, Town Councilwoman, P.O. Box 88, Route 1, Ravenel, South Carolina 29470.			
Tennessee	Town of Ashland, Cheatham County.	Cummerland River	At Frey Street extended	*402
	Maps available at City Hall, Court Street, Ashland City, Tennessee 37015.			
	Send comments to Mayor James C. Bailey or Mr. W.C. Jackson, City Recorder, City Hall, Court Street, Ashland City, Tennessee 37015.			
Texas	City of Nacogdoches, Nacogdoches County,.	Bonita Creek	Just downstream of South Pecan Street	*277
			Just upstream of Powers Street	*290
			Just downstream of South Pacific R.R.	*339
		Bayou La Nana	Approximately 250 feet downstream of Butt Street	*267
			Starr Avenue	*286
			Just upstream of East College Street	*289
			Just downstream of East Austin Street	*295
		Tributary A	Just upstream of Press Road	*261
			Approximately 250 feet downstream of State Highway 7	*305
		Tributary B	Just upstream of South Fredonia Street	*275
			Just downstream of South Street	*284
			Just upstream of South Street	*285
		Tributary C	FM 1638	*299
			Approximately 100 feet downstream of DAM	*325
			Approximately 175 feet upstream of DAM	*331
		Tributary D	Approximately 200 feet upstream of FM 1275	*291
			Approximately 100 feet upstream of FM 1878	*305
		Egg Nog Branch	Approximately 100 feet downstream of F.M. 2259	*308
			Just upstream of F.M. 2239	*313
	Maps available at Office of City Inspector, City Hall, 212 East Pilar Street, Nacogdoches, Texas 75961.			
	Send comments to Mayor A. L. Mangham, Jr., or Mr. J. T. Ammons, City Manager, City Hall, 212 East Pilar Street, Nacogdoches, Texas 75961.			
Texas	City of North Richland Hills, Tarrant County.	Little Bear Creek	Approximately 175 feet upstream of Kirk Lane	*620
			Just upstream of F.M. 1938	*635
		Little Bear Creek Tributary No. 1	Just upstream of F.M. 1938	*635
			Just downstream of Shady Grove Road	*662
		Little Bear Creek Tributary No. 2	Just upstream of North Field Street	*638
			Just downstream of F.M. 1938	*647
		Walker Branch	Just upstream of Cardinal Lane	*607
			Approximately 150 feet downstream of Brookridge Drive	*643

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Walker Branch Tributary No. 3	Just upstream of Cardinal Lane	*620
		Calloway Branch	Just upstream of Booth Calloway Drive	*558
			Just upstream of St. Louis-Southwestern Railroad	*612
			Approximately 100 feet downstream of Hightower Drive	*639
		Calloway Branch Tributary No. 4	Just upstream of Chapman Drive	*626
			Just upstream of Hightower Drive	*644
		Calloway Branch Tributary No. 5	Just upstream of Watauga Drive	*627
			Just upstream of St. Louis-Southwestern Railroad	*633
		Mackey Creek	Just upstream of Richland Plaza Drive	*540
			Just downstream of Harmonson Road	*560
			Just downstream of Pipeline Road	*580
		Big Fossil Creek	Approximately 200 feet downstream of Onyx Drive	*521
		Big Fossil Creek Tributary No. 6	Just upstream of State Highway 820	*550
		Big Fossil Creek Tributary No. 7	Just upstream of the dam	*579
			Just upstream of Roaring Creek Drive	*582
Maps available at Sub-Courthouse, 8000 Bedfordeuless Road, North Richland Hills, Texas 76118.				
Send comments to Mr. Jim Anderson, Director Public Work, City Hall, 7301 North East Loop 820, North Richland Hills, Texas 76118.				
Texas	City of Palestine, Anderson County.	Wells Creek Northwest	Just upstream of U.S. Highway 79	*396
			Just downstream of the northern corporate limits	*421
		Well Creek Tributary South	Just upstream of Highway Loop 256	*395
			Just upstream of Old Rusk Road	*405
			Approximately 50 feet downstream of East Park Avenue	*406
			Just upstream of East Park Avenue	*417
		Basset Creek	Just downstream of Basset Road	*333
			Just upstream of Farm to Market Road 2394	*347
Maps available at City Secretary's Office, City Hall, 504 North Queen Street, Palestine, Texas 75801.				
Send comments to Mayor Jack Rogers, or Mr. Ken Berry, City Manager, City Hall, P.O. Drawer Z, Palestine, Texas 75801.				
Vermont	South Burlington, City, Chittenden County.	Winooski River	Downstream Corporate Limits	*167
			Upstream of Dam	*204
			Upstream of Airport Parkway	*217
			Upstream Corporate Limits	*220
		Lake Champlain	Entire shoreline within community	*102
Maps available at the City Manager's Office, City Hall, South Burlington, Vermont.				
Send comments to Mr. Paul A. Farrar, President of the City Council of South Burlington, City Hall, 1137 Williston Road, South Burlington, Vermont 05401.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: April 30, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–15732 Filed 5–22–80; 5:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 809–204; RM–3421]

FM Broadcast Station in Auburn, Maine; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes to substitutue FM Channel 260 for Channel 261A at Auburn, Maine, and modify the license of the station currently operating on Channel 261A to specify operation on Channel 260. This proposal is made in response to a petition filed by The Great Down East Wireless Talking Machine Company. The Class B channel could provide for wider coverage of southern Maine.

DATES: Comments must be filed on or before June 30, 1980, and reply comments must be filed on before July 21, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Auburn, Maine), BC Docket No. 80–204, RM–3421.

Adopted: May 1, 1980.

Released: May 12, 1980.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by The Great Down East Wireless Talking Machine Company ("petitioner"), licensee of FM Station WWAV (Channel 261A), proposing the replacement of Channel 261A with Class B FM Channel 260 at Auburn, Maine, and Modification of its license (for Channel 261A) to specify Channel 260. No responses to the proposal have been filed.

[1] Public Notice of the petition was given on August 3, 1979, Report No. 1187.

(b) The proposed channel can be assigned to Auburn in compliance with the minimum distance separation requirements, provided the transmitter site is located approximately 3 kilometers (2 miles) south southwest or south southeast of Auburn. The proposed site is 17 kilometers (10.7 miles) south.

2. *Demographic Data.*—(a) *Location.* Auburn, seat of Androscoggin County, is located in southwestern Maine, approximately 43 kilometers (27 miles) southwest of Augusta, Maine.

(b) *Population.* Auburn—24,151 [2]; Androscoggin County—91,279.

(c) *Local Aural Broadcast Service.* Auburn is served locally by daytime-only AM Station WPNO and by FM Station WWAV (Channel 261A), licensed to petitioner.

3. *Economic Considerations.* Petitioner asserts that Auburn serves as the county's governmental, social, cultural and trading center. Contained in Auburn are the school board, social service agencies and other governmental units.

4. Petitioner claims that with its present operation on Channel 261A, WWAV can serve only 63% of the county with a 1 mV/m or better signal. It states that a full strength Class B station on Channel 260 would encompass 96% of the country within its 1 mV/m contour. Petitioner asserts that local news programming of county-wide matters and announcements of county school closings, and other winter-storm related information cannot reach all Androscoggin residents without a Class B facility. Petitioner notes that there has been a trend in WWAV's service area toward regionalization of public service facilities and since most of the consolidated community services will be centered in the Auburn/Lewiston area, it will be necessary to communicate with residents of three counties. Assignment of a Class B channel to Auburn would also enable WWAV to reach a portion of southeastern Oxford County not presently served within its 1 mV/m contour. Further, petitioner claims that five communities in Cumberland County would, for the first time, be encompassed by WWAV's 1 mV/m contour if Class B facilities could be employed.

5. Petitioner states that it competes for listening audience and advertising revenues with two FM stations (both Class B) located in nearby Lewiston. It adds that since it cannot reach as many potential listeners as the two Lewiston FM stations, it is handicapped in competing for revenues in the Auburn-Lewiston market.

6. Petitioner states that should the Commission decide to consider potential applicants for Channel 260 on a comparative basis, petitioner reserves the right to seek withdrawal of its petition without change in existing frequency.

7. *Preclusion Study.* Preclusion would be caused on Channels 259, 260, and 261A. Twenty-two communities, with populations greater than 1,000, would sustain preclusion on one or more of these channels. Twelve have no AM stations or FM assignments.[3] Petitioner has indicated that Channel 284 and Channel 292A could be assigned to some of the affected communities. Petitioner should indicate if alternative channels are available at each community.

8. In the event an additional interest were expressed in the Class B channel here proposed, petitioner's license could not be modified to specify operation on Channel 260. According to Commission policy, as expressed in *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976), other parties must be afforded an opportunity to state their interest in applying for a newly assigned Class B channel. Only in the absence of such interest could petitioner's license be modified. Since no person has yet expressed an interest in the proposed assignment of Channel 260 at Auburn, we are proposing to modify the license of Station WWAV(FM). However, should petitioner desire to withdraw its request in the face of a competing interest, we would be amenable to permit termination of the proceeding. See *Statesboro, Ga.,* RM-2566, Mimeo No. 82040, *Memorandum Opinion and Order,* released May 17, 1977, 40 R.R. 2d 1021.

9. An *Order to Show Cause* to the petitioner is not necessary since consent to a modification of its license is indicated by its request for a Class B channel.

10. Since Auburn is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 260 to Auburn, Maine, requires coordination with the Canadian Government before it can be adopted.

11. In light of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, as to the named community, as follows:

Community	Channel No.	
	Present	Proposed
Auburn, Maine	261A	260

12. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

13. Interested parties may file comments on or before June 30, 1980, and reply comments on or before July 21, 1980.

14. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral preservation required by the Commission.

Federal Communications Commission.

Henrry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80-204 RM-3421]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if

[2] Population figures are taken from the 1970 U.S. Census.

[3] *Maine:* Vinalhaven (pop. 1,135), Thomaston (2,646), Boothbay Harbor (2,320), Lisbon Falls (3,257), Freeport (4,781), Wiscasset (2,244), Richmond (2,168), Belfast (5,957), Bucksport (3,756), Newport (2,260), Winslow (7,299), and Winthrop (4,335).

advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-15816 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-212; RM-3452]

FM Broadcast Station in Geneva, Ohio; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Geneva, Ohio, in response to a petition filed by the American Ethnic Voice of Northeast Ohio. The proposed channel could provide for a first local aural broadcast service to the community.

DATES: Comments must be filed on or before July 7, 1980, and reply comments must be filed on or before July 28, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of Amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Geneva, Ohio), BC Docket No. 80-212, RM-3452.

Adopted: May 6, 1980.

Released: May 14, 1980.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by the American Ethnic Voice of Northeast Ohio ("petitioner"), proposing the assignment of FM Channel 285A to Geneva, Ohio, as that community's first FM assignment. No responses to the petition have been received.

(b) The channel can be assigned to Geneva, provided the transmitter site is located approximately 4.7 kilometers (2.93 miles) west northwest of the community. Petitioner states that the proposed channel would involve a short-spacing of approximately 31 kilometers (18.5 miles) to a co-channel Canadian Class B assignment in Port Colburne, Ontario. However, Canadian authorities have agreed to waive the short-spacing to permit operation on Channel 285A at Geneva.

(c) Petitioner states that it will apply for the channel, if assigned.

2. *Community Data.*—(a) *Location.* Geneva, in Ashtabula County, is located approximately 80 kilometers (50 miles) southwest of Erie, Pennsylvania, and 88 kilometers (55 miles) northeast of Cleveland, Ohio.

(b) *Population.* Geneva—6,499; [2] Ashtabula County—98,237.

(c) *Local Aural Broadcast Service.* None.

3. *Economic Considerations.* Petitioner states that, as of 1978, Geneva's population had increased 6.2% since 1970, while the population of Astabula County increased 10.3% during the same period.[3] Petitioner asserts that the principal economic industries in Geneva and Ashtabula County are manufacturing, including chemicals, rubber, plastics, fabricated metal products and electrical machinery construction. Petitioner has submitted demographic information with respect to Geneva which demonstrates the need for a first FM assignment.

4. As stated before, Canada has given its concurrence to this proposal as a specially negotiated short-spaced assignment.

5. In view of the apparent need for a first FM channel at Geneva, the Commission believes it would be in the public interest to propose the assignment of Channel 285A to that community.

6. Accordingly, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, with regard to Geneva, Ohio, as follows:

City	Channel No.	
	Present	Proposed
Geneva, Ohio	.....	285A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before July 7, 1980, and reply comments on or before July 28, 1980.

9. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80-212; RM-3452]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

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[1] Public Notice of the petition was given on August 17, 1979, Report No. 1188.

[2] Population figures are taken from the 1970 U.S. Census.

[3] This information was taken from *Alternative Futures for Ashtabula County*, Ashtabula County Planning Commission.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 80-15817 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 809-214; RM-3443]

FM Broadcast Stations in Beaufort and Ridgeland, S.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes to substitution of Class A channels at Beaufort, South Carolina, or, in the alternative, the substitution of a Class C for a Class A channel in the same community. It also proposes the assignment of a Class A FM channel to Ridgeland, South Carolina. Action is taken in response to a petition filed by J. Olin Tice, Jr. The proposed channel at Ridgeland would provide that community with its first FM local broadcast service.

DATES: Comments must be filed on or before July 7, 1980, and reply comments must be filed on before July 28, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Beaufort and Ridgeland, South Carolina), BC Docket No. 80-214, RM-3443.

Adopted: May 6, 1980.

Released: May 14, 1980.

1. The Commission has under consideration a petition for rule making[1] filed by J. Olin Tice, Jr. ("petitioner"), proposing the substitution of Class C Channel 259 for Channel 285A[2] at Beaufort, South Carolina, and the reassignment of Channel 285A to Ridgeland, South Carolina, as that community's first FM assignment. No responses to the proposal have been received.

2. Ridgeland (pop. 1,165),[3] seat of Jasper County (pop. 11,885) is located approximately 101 kilometers (63 miles) southwest of Charleston, South Carolina. Ridgeland is served locally by daytime-only AM Station WBUG. Channel 285A can be assigned to Ridgeland, provided the transmitter site is located 6 kilometers (3.8 miles) east of the community.

3. Beaufort (pop. 9,434), seat of Beaufort County (pop. 51,136) is located approximately 80 kilometers (50 miles) southwest of Charleston, and 29 kilometers (18 miles) east of Ridgeland. It is served locally by fulltime AM Station WSIB, daytime-only AM Station WBEU and Station WBEU-FM (Channel 254).

4. Petitioner states that the proposed Class A channel would provide Ridgeland with a first fulltime radio facility which is needed in the community, especially for its large minority population. He notes that the substitution of a Class C channel at Beaufort would comply with the Commission's policies by removing and intermixture of classes of channel assignments at Beaufort which is so situated that it is highly unlikely a Class A station could cover all of its area.

5. Channel 259 could be assigned to Beaufort provided the transmitter site is located 16 kilometers (10.2 miles) north northeast of Beaufort. This restricted siting on Channel 259 would not meet the separation requirements for the proposed site chosen by the applicant for Channel 285A at Beaufort. However, Channel 261A, which is available for assignment to Beaufort, would meet the spacing requirements at that site. Although the substitution of Channel 259 for Channel 285A would eliminate intermixture in Beaufort, we believe it would be in the public interest to propose, in the alternative, the assignment of Channel 261A for Channel 285A so that the applicant for Channel 285A would have an opportunity to indicate whether it would apply for the Class C assignment or whether it desires to amend its application specifiying Channel 261A. The applicant for the Class A channel at Beaufort is requested to comment on both proposals, and if the Class C channel is desired, to submit a preclusion study indicating alternate available channels for the affected communities. A preclusion study for the Class A proposals is not required since it would be a first Class A channel for Ridgeland and a substitute assignment for Beaufort.

6. In view of the foregoing information, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with respect to Beaufort and Ridgeland, South Carolina, as follows:

City	Channel No.	
	Present	Proposed
Beaufort, S.C.	254, 285A	254, 261A
Ridgeland, S.C.	.....	285A

[1] Public Notice of the petition was given on August 17, 1979, Report No. 1188.

[2] An application for Channel 285A at Beaufort has been filed by Beaufort County Broadcasting Company (BPH790918AC).

[3] Population figures are taken from the 1970 U.S. Census.

City	Channel No.	
	Present	Proposed
or		
Beaufort, S.C.	254, 285A	254, 259
Ridgeland, S.C.		285A

7. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before a channel will be assigned.

8. Interested parties may file comments on or before July 7, 1980, and reply comments on or before July 28, 1980.

9. It is ordered, That the Secretary of the Commission shall send a copy of this Notice by certified mail, return receipt requested, to Beaufort County Broadcasting Company, P.O. Box 7398, Chatsworth, Georgia 30705.

11. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80-214 RM-3443]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-15818 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 80-211; RM-3579]

FM Broadcast Station in Elloree, S.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Elloree, South Carolina, in reponse to a petition filed by Santee-Cooper Broadcasting Company. The proposed channel would provide for a first local aural broadcast service to Elloree.

DATES: Comments must be filed on or before July 7, 1980, and reply comments must be filed on or before July 28, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Elloree, South Carolina), BC Docket No. 80-211, RM-3579.

Adopted: May 6, 1980.

Released: May 14, 1980.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making[1] was filed by Santee-Cooper Broadcasting Company ("petitioner"), proposing the assignment of FM Channel 257A to Elloree, South Carolina, as that community's first FM assignment.

(b) Channel 257A could be assigned to Elloree in compliance with the minimum distance separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Demographic Data.*—(a) *Location.* Elloree, in Orangeburg County, is located approximately 108 kilometers (67 miles) northwest of Charleston, South Carolina.

(b) *Population.* Elloree—970[2]; Orangeburg County—69,789.

(c) *Local Aural Broadcast Service.* None.

3. *Economic Considerations.* Petitioner states that Elloree and its surrounding area is the retirement and recreational spot in the heart of South Carolina. It asserts that the proposed station would provide a first local aural service to Elloree and would also serve an important section of rural population in Orangeburg County. Petitioner has submitted demographic data in order to demonstrate the need for a first FM assignment to Elloree.

4. In view of the fact that the proposed FM channel assignment would provide for a first local aural broadcast service to Elloree, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's rules, with regard to Elloree, South Carolina, as follows:

[1] Public Notice of the petition was given on February 20, 1980, Report No. 1215.

[2] Population figures are taken from the 1970 U.S. Census.

City	Channel No.	
	Present	Proposed
Elloree, S.C.		257A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before July 7, 1980, and reply comments on or before July 28, 1980.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideratin or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

[BC Docket No. 80-211 RM-3579]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-15819 Filed 5-22-80; 8:45 am]

BILLINGH CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-202; RM-3234)]

FM Broadcast Station in Goose Creek, S.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Goose Creek, South Carolina, in response to a petition filed by William K. Durst. The proposed assignment would provide a first local aural broadcast service to the community.

DATES: Comments must be filed on or before June 30, 1980, and reply comments must be filed on or before July 21, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 1, 1980.

Released: May 9, 1980.

In the matter of amendment of § 73.202(b), *Table of assignments,* FM Broadcast Stations. (Goose Creek, South Carolina), BC Docket No. 80-202, RM-3234.

1. *Petitioner, Proposal, Comments*—(a) *Notice of Proposed Rule Making* is hereby given of the assignment of FM Channel 269A to Goose Creek, South Carolina, in response to a petition [1] filed by William K. Durst.[2]

(b) Supporting comments were filed by B. M. Tennyson, stating that he will apply for the channel, if assigned to Goose Creek.

2. *Community Data*—(a) *Location.* Goose Creek, in Berkeley County, is located approximately 26 kilometers (16 miles) north of Charleston, South Carolina.[3]

(b) *Population.* Goose Creek—3,656 [4]; Berkeley County—56,199.

(c) *Local Aural Broadcast Service.* None. Goose Creek receives service from Stations WKTM(FM) (Channel 273) and WNCG(AM), North Charleston.

3. *Economic Considerations.* Petitioner states that Goose Creek is a rapidly growing community in South Carolina and readily accessible to the major industrial and commercial area of North Charleston. He adds that economic expansion is continuing with construction of a new aluminum plant adjacent to Goose Creek.

4. In view of the fact that the proposed FM channel could provide a first local aural broadcast service to Goose Creek, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules with regard to Goose Creek, South Carolina:

[1] Public Notice of the petition was given on November 15, 1978, Report No. 1150.

[2] Durst had requested that Channel 240A be assigned to Goose Creek. However, that channel number conflicts with a petition which requests Class C FM Channel 241 or in the alternative Channel 259 to North Charleston, South Carolina (RM-3429). To avoid the conflict, we have determined that Channel 269A could be assigned to Goose Creek.

[3] Although a preclusion study was submitted and considered by us, we have not included that information because we believe that Goose Creek is far enough away from the city of Charleston to remove the issue as an obstacle to the assignment of a Class A channel to Goose Creek.

[4] Population figures are taken from the 1970 U.S. Census.

Community	Channel No.	
	Present	Proposed
Goose Creek, S.C.		269A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before June 30, 1980, and reply comments on or before July 21, 1980.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a meassage (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

[BC Docket No. 80-202 RM-3234]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompained by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, and original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-15820 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-213; RM-3406]

FM Broadcast Station in Mount Pleasant, S.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Mount Pleasant, South Carolina, in response to a petition filed by John M. Dunnagan. The proposed channel could provide for a first local aural service to Mount Pleasant.

DATES: Comments must be filed on or before July 7, 1980, and reply comments on or before July 28, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 6, 1980.

Released: May 14, 1980.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Mount Pleasant, South Carolina), BC Docket No. 80-213, RM-3406.

1. *Petitioner, Proposal, Comments.* (a) *Notice of Proposed Rule Making* is hereby given of the assignment of FM Channel 221A to Mount Pleasant, South Carolina, in response to a petition[1] filed by John M. Dunnagan ("petitioner").[2, 3]

(b) Channel 221A can be assigned to Mount Pleasant in compliance with the minimum distance separation requirements.

(c) Petitioner states he will apply for the channel, if assigned.

2. *Community Data*—(a) *Location.* Mount Pleasant, in Charleston County, is located approximately 6 kilometers (4 miles) from Charleston, South Carolina.

(b) *Population.* Mount Pleasant—6,155;[4] Charleston County—247,650.

(c) *Local Aural Broadcast Service.* None.

3. *Economic Considerations.* Petitioner points out that Mount Pleasant has had a 20.3% increase in population between 1960-1970. He states that the most important single industry in and around Mount Pleasant is fishing, with large seafood packing companies located in Mount Pleasant. Petitioner notes that because of the community's rapid growth, the construction and service industries have expanded greatly.

4. Because of the proximity of Mount Pleasant to the city of Charleston, a preclusion study should be submitted for Channel 221A.

5. In view of the apparent need for a first local aural broadcast service in Mount Pleasant, the Commission

[1] Public Notice of the petition was given on August 3, 1979, Report No. 1187.

[2] Dunnagan had requested that Channel 269A be assigned to Mount Pleasant. However, that petition conflicts with a proposal to assign Channel 269A to Goose Creek, South Carolina, which, in turn, was selected to avoid a conflict with a channel proposed for North Charleston, South Carolina. Since it has been determined that Channel 221A can be assigned to Mount Pleasant, we are proposing it for that community.

[3] A petition filed by Santee-Cooper Broadcasting Company on March 23, 1980, also requested that Channel 221A be assigned to Mount Pleasant. We treated this petition as comments in support of the instant petition.

[4] Population figures are taken from the 1970 U.S. Census.

proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, with regard to Mount Pleasant, South Carolina, as follows:

City	Channel No.	
	Present	Proposed
Mount Pleasant, S.C.		221A

6. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before July 7, 1980, and reply comments on or before July 28, 1980.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80-213 RM-3406]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-15821 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-201; RM-3249]

FM Broadcast Station in North Charleston, S.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the assignment of a second Class C FM channel to North Charleston, South Carolina, in response to a petition filed by T. B. Trammel. The proposed assignment would provide for a second local FM broadcast service to the community.

DATES: Comments must be filed on or before June 30, 1980, and reply comments must be filed on or before July 21, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 1, 1980.

Released: May 12, 1980.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (North Charleston, South Carolina), BC Docket No. 80-201, RM-3249.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by T. B. Trammel ("petitioner"), proposing the assignment of Class C Channel 241, or in the alternative, Channel 259, to North Charleston, South Carolina. William K. Durst, petitioner for a Class A channel at Goose Creek, South Carolina (RM-3234), also expressed an interest in applying for the Class C assignment at North Charleston, if assigned.

(b) Either Class C channel could be assigned to North Charleston in conformity with the minimum distance separation requirements. However, because Channel 259 conflicts with two other pending petitions, including Ridgeland and Beaufort, South Carolina (RM-3443) and Elloree, South Carolina (RM-3579), we have proposed Channel 241 for North Charleston.

(c) Petitioner states it will apply for the Class C channel, if assigned.

2. *Community Data*—(a) *Location.* North Charleston, in Charleston County, is located approximately 10 kilometers (6 miles) north of Charleston.

(b) *Population.* North Charleston—19,854; [2] Charleston County—247,650.

(c) *Local Aural Broadcast Service.* North Charleston is served locally by daytime-only AM Station WNCG, and FM Station WKTM (Channel 273).

3. *Economic Considerations.* Petitioner asserts that North Charleston plays an important role in the growth and expansion of the entire county. It states that North Charleston contains the largest share of industry in the area, as well as the Charleston Naval Base,

[1] Public Notice of the petition was given on December 6, 1978, Report No. 1154.

[2] Population figures are taken from the 1970 U.S. Census. The North Charleston population figure is shown as an urbanized civil division rather than a city or town.

which makes North Charleston a large center of employment.

4. *Preclusion Study.* Preclusion would occur on Channels 240A and 241 as a result of the assignment of Channel 241 to North Charleston. Channels 238, 239, 242, 243 and 244A are already precluded by existing assignments. Nineteen communities of over 1,000 population are located in one or both of North Charleston's newly precluded areas. Of these, fourteen have no local AM stations or FM assignments.[3] Although the petitioner states that alternate channels are available for all of these communities except Summerton, the alternate channels suggested are being proposed in other pending rule makings. If all proposals are adopted, these communities would be precluded with no alternative channels available. It also appears that no first or second FM or nighttime aural service would be provided by the addition of the North Charleston assignment.

5. In light of the foregoing information, and the fact that the proposed assignment would provide a growing community with a second local FM broadcast service, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to North Charleston, South Carolina:

City	Channel No.	
	Present	Proposed
North Charleston, S.C.	273	241, 273

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before June 30, 1980, and reply comments on or before July 21, 1980.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice a proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

[3] *South Carolina:* Summerton (pop. 1,305), Pinehurst-Sheppard Park (1,711), Charleston Base (6,238), Hanahan (8,376), Isle of Palms (2,657), Sullivans Island (1,426), Folly Beach (1,157), Avondale-Mooreland (5,236), Charleston Yard (13,565), James Island (24,197), St. Andrews (9,202), Dupont (not listed), Mount Pleasant (6,155), and Goose Creek (3, 656).

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80-201 RM-3249]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authroized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-15822 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 45, No. 102
Friday, May 23, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 5, 1980, at 1:45 p.m. and on Friday, June 6, 1980, at 9:45 a.m. in The Amphitheater of the Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C.

The Conference will consider proposed recommendations on the following matters:

1. Trade Regulation Rulemaking under the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act.
2. Forum for Enforcement of Petroleum Price Regulations.
3. Interpretation and Implementation of the Federal Advisory Committee Act.
4. Disqualification of Decisional Officials in Informal and Hybrid Rulemaking.

In addition, the Conference will consider reports and proposed resolutions on Conference research planing and the implementation of Conference recommendations and a proposed resolution to suspend a portion of Section 2(B) of the Conference Bylaws.

Plenary Sessions of the Conference are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street NW., Suite 500, Washington, D.C. 20037, telephone (202) 254–7020.

Dated: May 19, 1980.

Richard K. Berg,

Executive Secretary.

[FR Doc. 80–15845 Filed 5–22–80; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Availability of a Final Revised Environmental Impact Statement of the Rangeland Grasshopper Cooperative Management Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability of the final revised environmental impact statement on the Rangeland Grasshopper Cooperative Management Program.

SUMMARY: This gives notice that the Department has prepared the final revised environmental impact statement (FEIS) on the Rangeland Grasshopper Cooperative Management Program. The FEIS (USDA–APHIS–ADM–79–1–F) was sent to the Environmental Protection Agency (EPA) on May 16, 1980, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, by the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

ADDRESS: Requests for a copy of the FEIS should be addressed to the Pest Program Development Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782.

Copies are available for public inspection at the following locations.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 302–E, Administration Building, 14th and Independence Avenue, Washington, D.C. 20250

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 7100 West 44th Avenue, Suite 102, Wheat Ridge, CO 80033

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 620 Central Avenue, Building 2B, Alameda, CA 94501

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 2100 Boca Chica Boulevard, Suite 400, Brownsville, TX 78521

FOR FURTHER INFORMATION CONTACT: Shannon W. Wilson, 301–436–8745.

SUPPLEMENTARY INFORMATION: A notice of the Department's intent to prepare a draft revised environmental impact statement (DEIS) on the Rangeland Grasshopper Cooperative Management Program was published in the **Federal Register** (44 FR 66008) on November 16, 1979. After consideration of comments received in response to this notice, a DEIS was prepared. A notice of availability of the DEIS for review was published in the **Federal Register** (45 FR 1113) on January 4, 1980.

The public was given the opportunity to participate in the development of the DEIS. Based on comments received in response to the DEIS, a notice of a supplemental DEIS was published in the **Federal Register** (45 FR 23003), on April 4, 1980, to obtain further comments to assist in the preparation of the FEIS. Comments were due May 2, 1980. However, the EPA requested extension of the comment period from May 2 to May 7. In order to accomodate EPA's request, the Plant Protection and Quarantine Programs of APHIS extended the acceptance of all comments to May 7, 1980.

All comments received pursuant to the notice of availability of the supplementary DEIS were considered in the preparation of this FEIS. The FEIS has been transmitted to the Environmental Protection Agency.

Done at Washington, D.C., this 16th day of May 1980.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 80–15599 Filed 5–22–80; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Finding of No Significant Impact; Site Preparation Project for 1980, Skamania and Klickitat Counties, Wash., Gifford Pinchot National Forest, Mt. Adams Ranger District

An Environmental Assessment investigating a proposed program for 1980 of site preparation to increase survival of planted seedlings on backlog units within the Mt. Adams Ranger District of the Gifford Pinchot National Forest is available at the Mt. Adams Ranger District office and the Gifford Pinchot National Forest Supervisor's Office.

This assessment considers treatment of 1,702 acres of cutover plantations. The Forest Service preferred alternative consists of treating 602 acres with the chemical Roundup in an early summer spot application, 518 acres with the chemical Roundup with fall broadcast application, 294 acres of manual treatments, 109 acres treated by mechanical methods, and 180 acres considered for no treatment.

These projects are not considered to be a major Federal action significantly affecting quality of the human environment; therefore, it has been determined that an environmental impact statement is not needed.

There is no effect on prime farmlands, range or forest lands. No flood plains or wetlands are located in the project area.

The project is not soiled and land disturbing; therefore, a cultural resource inventory is not required.

No endangered plants or animals are known to exist in the project area. This project meets all requirements of the National Forest Management Act, specifically the five year regeneration requirement.

The preferred alternative provides the best combination of physical, biological, social and economic benefits and is considered to be the environmentally preferable alternative.

Implementation of this action may take place 30 days after publication of this notice in the **Federal Register.**

The responsible official is Robert D. Tokarczyk, Forest Supervisor, Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington 98660.

Dated: May 15, 1980.

Duane G. Tucker,

Deputy Forest Supervisor.

[FR Doc. 80-15790 Filed 5-22-80; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Certain Steel Wire Nails From the Republic of Korea; Antidumping: Final Determination of Sales at Less Than Fair Value and Exclusion From Investigation

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Final determination of sales at less than fair value and exclusion from investigation.

SUMMARY: In this antidumping investigation the Department of Commerce has determined that certain steel wire nails from certain Korean companies are being sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673). We are referring this case to the United States International Trade Commission for a determination whether the sales made at less than fair value by these companies have caused or are likely to cause material injury to a domestic industry.

EFFECTIVE DATE: May 23, 1980.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202-377-1785).

SUPPLEMENTARY INFORMATION:

Background

On April 20, 1979, the Treasury Department began this investigation with publication of an "Antidumping Proceeding Notice" in the **Federal Register** (44 FR 23621). Treasury started the investigation on its own initiative in conjunction with its administration of the "Trigger Price Mechanism" (TPM). The TPM was established in December 1977 to monitor prices at which certain steel mill products enter the United States.

Special Summary Steel Invoices submitted by importers indicated that steel wire nails imported from 22 Korean companies were being sold at prices less than the appropriate "trigger price" for that product. Further investigation revealed the possibility that these steel wire nails were being, or were likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

The "Antidumping Proceeding Notice" indicated that there was evidence on the record concerning injury to, or likelihood of injury to, an industry in the United States. However, the notice also indicated that there was substantial doubt that imports of such merchandise from Korea were causing, or were likely to cause, injury. Treasury so advised the United States International Trade Commission (ITC) pursuant to section 201(c)(2) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(c)(2)). On May 23, 1979, the ITC published its decision that there was reasonable indication that an industry in the United States is being, or is likely to be, injured by reason of the importation of certain steel wire nails from Korea possibly sold at less than fair value (44 FR 29989). Therefore, the investigation proceeded.

On October 26, 1979, Treasury published a notice of "Tentative Determination of No Sales at Less Than Fair Value and Tentative Discontinuance" in the **Federal Register** (44 FR 61722). This notice advised the public that, with the exception of merchandise produced by Murakami Kogyo Company, there was no reason to believe or suspect that steel wire nails from Korea were being sold to the United States at less than fair value. In the case of Murakami Kogyo, the investigation was tentatively discontinued because the margins found were minimal and assurances of no future sales at less than fair value had been received.

Counsel for the parties raised a number of issues following the Tentative Determination, both in written submissions and orally at a hearing held on December 12, 1979. Among the issues raised were:

—The time period over which certain production costs were calculated in determining constructed value.

—Adjustments for differences in merchandise in those instances where fair value comparisons involved purchase prices and either home market or third Country prices.

—The applicability of the multinational corporation provision (Sec. 773(d) of the Tariff Act of 1930) to certain firms subject to the investigation.

—Changes in circumstances following the priod selected for examination of price and cost of production data (the investigatory period).

On January 1, 1980, the Trade agreements Act of 1979, Pub. L. 96-39, took effect. The 1979 Act repealed the Antidumping Act of 1921 and replaced it with Subtitle B of Title VII of the Tariff Act of 1930 (hereinafter referred to as "the Act"). The Department of Commerce determined that the transition rules of the 1979 Act, specifically section 102(b)(2) (93 Stat. 189, 19 U.S.C. 1671 note), covered pending investigations of less than fair

value sales in which no final determination had been made but in which a tentative negative determination had been made by December 31, 1979.

In accordance with these rules the investigation under the Antidumping Act of 1921, as amended, covering certain steel wire nails from the Republic of Korea was terminated on January 1, 1980, and the investigation continued under the provisions of Title VII of the Act (93 Stat. 150 et seq.) as if the preliminary determination under the Antidumping Act has been a preliminary determination under section 733 of the Act, (93 Stat. 163, 19 U.S.C. 1673b), made on January 1, 1980.

The Commerce Department subsequently determined under section 735(a)(2) of the Act that an extension of the time period in which to make a final determination was necessary in this case and published notice to this effect in the **Federal Register** on March 19, 1980 (45 FR 17624). This determination was based upon the need to collect, verify and analyze additional information, particularly with respect to (1) the possible application of the multinational corporation provision of the Act and (2) the possible recalculation of constructed value.

For purposes of this determination, the term "steel wire nails" refers to nails, brads, spikes, staples and tacks of one-piece construction which are made of round steel wire and which enter the United States under item numbers 646.25 and 646.26 of the Tariff Schedules of the United States Annotated (TSUSA).

Scope of the Investigation

This case was initiated as a result of sales by twenty-two Korean companies of steel wire nails in the U.S. market at prices below the prevailing trigger price level. Because of the difficulties in examining in detail price and cost of production data of all Korean producers which sold nails below trigger prices a representative sample of twelve producers was used for purposes of the investigation. The companies investigated were:

1. Daegu Moolsan Co., Ltd. (Daegu Moolsan).
2. Dae Han Sang Sa Co., Ltd. (Dae Han Sang Sa).
3. Jin Heung Iron and Steel Co. (Jin Heung).
4. Kankoku Nittei Co., Ltd. (Kankoku Nittei).
5. Kankoku Nitto Co., Ltd. (Kankoku Nitto).
6. Korea Murata Industrial Co., Ltd. (Korea Murata).
7. Korea Nail Manufacturing Co., Ltd. (Korea Nail).
8. Korea Nippon Seisen Co., Ltd. (Korea Nippon Seisen).
9. Kuk Dong Metal Ind., Co. (Kuk Dong).
10. Murakami Kogyo Co., (Masan) Ltd. (Murakami Kogyo).
11. New Korea Nails Ind., Co., Ltd. (New Korea Nails).
12. Young Sin Metal Industrial Co., Ltd. (Young Sin).

During the period of investigation, these twelve companies accounted for 73% of U.S. imports of steel wire nails from Korea.

Korean exporters (both manufacturers and trading companies) which were not included in the sample of producers selected for purposes of investigation but were found to be selling in the U.S. at prices below trigger prices were given the opportunity to provide price and cost of production information to demonstrate that they did not sell the merchandise at less than fair value during the period of investigation. One company, Korea Electrode, provided such information. However, the information submitted did not include a nonconfidential summary of confidential information, as required by § 353.28 of Commerce Regulations, and was accordingly returned. Korea Electrode was given an opportunity to revise its submission to include such a summary, but chose not to do so.

Pricing information and cost of production information were obtained and examined for shipments to the United States, to the home market and to third countries during the period December 1, 1978 through March 31, 1979.

U.S. Price

Purchase price, as defined in Section 772 of the Act (19 U.S.C. 1677a) was used for determining the "United States price" because all sales by the companies investigated were made to unrelated U.S. customers prior to the date of importation. Purchase price was calculated on the basis of the f.o.b., f.o.b.c., c&f and c.i.f., packed price to an unrelated trading company or to an unrelated purchaser in the United States, as appropriate. Where applicable, we deducted from this price ocean freight, insurance, stevedorage, wharfage, Customs clearance, handling, inland freight, and commissions. Where applicable, we added to the price the Korean value-added tax, defense tax, and duties on imported raw materials rebated on export but which are included in the price of products sold in Korea.

Foreign Market Value

Home market prices could be used as the basis for foreign market value for only two companies (Kuk Dong and New Korea Nails). The overwhelming proportion of all sales by the companies investigated were to the U.S. market. Only three of the companies sold in the home market during the period of investigation. Of these three, one company (Jin Heung) sold in Korea so small a fraction of the amount it sold to the United States (less than 2.5%) that the home market sales do not provide an adequate basis for determining foreign market value. The other two companies, Kuk Dong and New Korea Nails, shipped to the home market 5% or more of the quantity shipped to the United States and, where there were third country sales, shipped greater quantities to the home market than were shipped to the third country. Home market prices were calculated by making adjustments for differences in packing to the weighted-average ex-factory price to unrelated purchasers in Korea. In the case of Kuk Dong, we disallowed an adjustment claimed under § 353.15 Customs Regulations (19 CFR 353.15) for extension of credit to domestic purchasers due to insufficient documentation.

Third country sales were used as the basis for foreign market value for the one company whose sales in Canada were 5% or more of the company's sales in the U.S. (Korea Nails). Foreign market value was calculated by deducting from the c&f value of sales to unrelated Canadian purchasers deductions for ocean freight, wharfage, inland freight, stevedorage, and Customs brokerage. Third country sales were not used in the case of Daegu Moolsan, whose shipments to Japan were well below 5% of shipments to the United States, or in the case of Murakami Kogyo, which was subject to the the multinational corporation provision of the Act (see below).

The use in this case of the 5% benchmark for deciding whether sales in the home market or to third countries are adequate for determining foreign market value does not establish a rigid rule of general application. The 5% benchmark does provide a guideline from which our analysis begins, but in some cases there may be particular facts that require another result in order to implement the purposes of the Act. In this case there are no such special facts.

For four of the remaining nine companies that were investigated constructed value was the basis for foreign market value (Daegu Moolsan, Dae Han Sang Sa, Jin Heung and Young Sin).

Sales in both the home market and third country market for each of these companies were either nonexistent or inadequate to form a basis for comparison with the U.S. price.

We calculated constructed value by adding the cost of raw materials and fabrication, general expenses and profit considered usual in the trade (but not less than the minimum amounts required by Section 773(e) of the Act) and the cost of all containers and coverings used to pack the merchandise for shipment to the United States.

In the tentative determination constructed value was computed from the average cost of production data supplied by each company for an entire year. Counsel for the domestic industry maintained that the use of annual data is improper for calculation of the cost of raw materials and fabrication elements of constructed value. Section 773(e) of the Act (19 U.S.C. 1677(b) states that the constructed value shall be "the cost of materials * * * and of fabrication or other processing * * * at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of this particular merchandise * * *." Counsel argued that average annual raw material and fabrication costs did not represent the costs "at the time preceding the date of exportation" which would "ordinarily" permit the manufacture of the nails exported during the investigatory period and that the use of annual data, as opposed to data for a more limited period, significantly understated the proper raw material and fabrication costs.

Based upon a review of the Korean nail industry, and in particular the average lag time between date of purchase of raw materials and date of exportation of the finished product made from these materials, we determined that raw material and fabrication costs for the period August through November 1978 provided a more appropriate basis for calculating the value of those elements of the constructed value during the period of investigation than did annual data.

General expenses and profit for each company were calculated using the annual data originally supplied, because section 773(e) distinguishes between the treatment of raw materials and fabrication, on the one hand, and general expenses (e.g. general overhead, capacity utilization) and profit, on the other. For general expenses and profit the use of annual data or data over an appropriate "normalized" period (e.g. a business cycle) may be used.

Foreign market value for the remaining five companies (Kankoku Nittei, Kankoku Nitto, Korea Murata, Korea Nippon Seisen and Murakami Kogyo) must be determined in an unusual way. All five are located in the Masan Free Trade Zone and hereafter referred to collectively as the Masan Companies. The Trade Act of 1974 added to the Antidumping Act of 1921 a special rule for determining foreign market value for certain multinational corporations. This provision was retained in section 773(d) of the 1979 Act (19 U.S.C. 1677b(d). It requires that where:

(1) Merchandise exported to the United States is being produced in facilities which are owned * * * by a person, firm or corporation which also owns or controls * * * other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) The sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with sales of the merchandise to the United States; and

(3) The foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation."

Then the foreign market value of such merchandise shall be determined "by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation." Congress added this provision to ensure that our antidumping laws "cannot be evaded by a multinational company which practices price discrimination through plants situated in several countries" S. Rep. 93–1298 at 175 (1974).

The five Masan Companies were subsidiaries of Japanese corporations. None sold steel wire nails in Korea during the investigatory period. Thus, the first two criteria of 773(d) were met.

With respect to the third criterion, the Treasury Department had developed "trigger prices" for nails based on data supplied by steel producers in Japan. Because trigger prices for the nails under investigation were higher than the foreign market values established for the production of each of the Masan companies, there was sufficient cause to request actual home market price information from each of the Japanese companies related to the Korean exporters.

A request was made to the Government of Japan to collect information from the Japanese companies related to the nail producers in the Masan Free Export Zone. The Commerce Department was unable to obtain authorization to present the questionnaires necessary to collect the appropriate data.

Section 776(b) of the Act (19 U.S.C. 1677e) states that whenever any party refuses or is unable to produce information requested, the Commerce Department will use the "best information otherwise available" in determining the existence of "less than fair value" sales. In this case, the relevant trigger prices for steel wire nails are the "best available information" of the foreign market value for nails in Japan. Because these trigger prices are greater than the foreign market value which would otherwise be used for the Masan Companies, section 773(d) is applicable. For these five companies, therefore, we compared the purchase price to the foreign market value in Japan, as represented by trigger prices.

Respondents requested that the foreign market value for the five companies subject to the multinational corporation provisions of the Act should be adjusted for differences in the cost of production between Japan and Korea. No information has been submitted by the Japanese parents which would permit the determination of whether such cost differences in fact exist and how great any such differences may be. In light of the inability of the Japanese companies to provide verifiable information, no adjustment has been allowed.

In early 1980 two of the multinational companies subject to the provision of Section 773(d) of the Act were sold by their Japanese owners to Korean enterprises. Counsel for the Korean producers has argued that, even though the two companies were sold after the period investigated, Section 773(d) should not apply to these companies because they no longer meet the criteria of section 773(d).

The issue raised is an important one. Under what conditions and to what extent should a determination under the Act take into account circumstances which differ from the situation that existed during the period investigated?

In every anti dumping investigation information is collected and examined concerning prices and/or cost of production over a finite period. The result is necessarily a "snap-shot" of the companies under investigation at a specific point in time. Economic and business conditions are, of course, constantly changing. The "snap-shot" taken will not reflect subsequent changes in circumstances affecting the companies being investigated.

There will undoubtedly be cases in which the impact of developments

subsequent to the period selected for examination of information are of such overriding significance that they must be factored into a determination of sales at less than fair value. As a rule, however, adjustment to findings for subsequent changed circumstances will not be made. Selection of a specific investigatory period is the only practical way of thoroughly investigating a large volume of complex international business transactions. Without a general presumption against adjustment for subsequent change in circumstances, claims for analysis of revised data or other adjustments for such changes would be made continuously. Under these circumstances, firm conclusions would at best prove elusive.

In this particular case, the purportedly changed circumstances could quite easily change again soon after publication of this determination (i.e., resale of the two companies back to Japanese or other foreign interests).

Assuming that an antidumping order is issued after the material injury investigation of the U.S. International Trade Commission, a company may petition for review under Section 751(b) of the Act, based on changed circumstances. Where good cause is shown, we will undertake such a review expeditiously.

Cost of Production

At the time it initiated the investigation, Treasury had evidence indicating possible sales of steel wire nails at prices below the cost of production. Pursuant to section 773(b) of the Act (19 U.S.C. 1677b(b)), substantial home market or third country sales made at less than the cost of production must be disregarded in determining fair value. Cost of production data was collected from all of the companies under investigation for the most recent full fiscal year for which cost of production data was available. For all but two of the companies that period was calendar year 1978. For the remaining two firms, cost of production data was supplied for the period April 1, 1978, through March 31, 1979.

Based on analysis of this data, we determined that for those three companies in which home market price or third country price was used for purposes of determining foreign market value, no sales were made at prices below the cost of production and therefore no home market or third country sales were disregarded.

Other Issues

In determining whether merchandise is being, or is likely to be, sold in the United States at less than fair value, comparisons are, to the maximum extent possible, made between sales of identical merchandise. Where such merchandise is not available for comparison purposes, similar merchandise is used. In this case, some sales of items similar to but not identical with merchandise sold to the United States were used when foreign market value based upon the price of home market or third country sales.

Section 353.16 of the Commerce Regulations (19 CFR 353.16) states that in comparing U.S. price with the selling price of merchandise sold in the home market or for sale to third countries, due allowance shall be made for differences in the physical characteristics of the items being compared. This allowance is generally established on the basis of differences in the cost of manufacturing of the items under consideration.

At the time of the tentative determination in this case, no adjustments for differences in physical characteristics were made in the comparisons involving similar merchandise. Counsel for domestic industry claimed that adjustments for such differences should be made on the basis of verified cost data, or in the absence of such data, on the basis of the trigger price differences for these products.

Cost information was submitted and verified as part of our determination that sales in the home market or to third countries were not being made at less than cost of producing the merchandise. On the basis of this verified information on the cost of materials and fabrication of the similar items, we have made appropriate adjustments for differences in physical characteristics of the merchandise.

Counsel for the domestic industry has also argued that conditions have changed materially since the four month period selected for evaluation of price and cost of production data and that the subsequent developments should be factored into this determination. Counsel for the Korean producers has challenged the contentions of materially changed circumstances.

This issue has been reviewed in some detail in the discussion of the sale of two Masan Companies, surpra. As stated above, a thorough investigation of sales and cost of production data on a large number of complex international business transactions requires that we examine transactions over a fixed period. Economic and business conditions are contantly changing. In order for adjustments to be made for developments following the period selected for examination of data, there must be compelling reasons to make such adjustments. While changed circumstances have been alleged and limited supporting data presented, the issues are not clear on thier face. Without a full investigation of subsequent developments it is impossible to determine what, if any, impact they would have on the findings made. A compelling case for adjustment for subsequent developments has not been made.

Information submitted and relied upon in this determination was verified by on-site examination of the manufacturing and accounting records of the companies investigated, including:

1. Manufacturing expense ledgers;
2. Raw material purchase ledgers;
3. Production ledgers;
4. Invoices and supporting documents such as purchase orders, letters of credit;
5. Salary records;
6. Raw materials account books;
7. Labor cost account books;
8. Production expense account books; and
9. Financial statements.

Results of Fair Value Comparisons

During the period under consideration, comparisons were made on all nails shipped to the Untied States by Dae Han Sang Sa, Kuk Dong and Young Sin. Approximately 92 percent, 98.6 percent and 78.9 percent by value of the nails shipped by Daegu Moolsan, Jin Heung and Kankoku Nittei respectively were compared for this determination. In the case of Kankoku Nitto, Korea Murata and Korea Nails, approximately 97 percent, 86 percent and 76.8 percent of their respective nail shipments to the U.S. were compared for this determination. Approximately 94.4 percent, 98.5 percent and 75 percent by value of the nails shipped by Korea Nippon Seisen, Murakami Kogyo and New Korea Nails were compared for this determination. Taken together comparisons were made or approximately 64 percent by value of all nails shipped from Korea to the U.S. during the period of investigation. The results of these comparisons follow:

Manufacturer	Percent margin range	Percent weighted average margin on all sales compared
Daegu Moolsan	0–23.1	.28
Dae Han Sang Sa	0–4.2	.16
Jin Heung	0–3.0	.005
Kankoku Nittei	0–19.4	5.5
Kankoku Nitto	.1–19.8	11.5
Korea Murata	0–27.9	11.1
Korea Nails	0–9.3	.21
Korea Nippon Seisen	4–13	10.5
Kuk Dong	0–31.2	1.3
Murakami Kogyo	0–32.1	5.7
New Korea Nails		
Young Sin		

In the case of Daegu Moolsan, Dae Han Sang Sa, Jin Heung and Korea Nails, weighted average margins are *de minimis*.

On the basis of above list, the following companies are selling below fair value: Kankoku Nittei, Kankoku Nitto, Korea Murata, Korea Nippon Seisen, Kuk Dong and Murakami Kogyo.

In initiating TPM based cases, it has been the policy of the Treasury Department to only initiate against those companies which were found to be selling below the applicable trigger price. (See for example, T.P. 79–166, *Certain Carbon Steel Plate from Taiwan*, 44 FR 33877). The Tentative Determination in this investigation excluded from the scope of investigation a number of companies. Companies which were so excluded as well as those companies investigated and found not to be selling at less than fair value or found to be selling at less than fair value in *de minimis* amounts are excluded from the scope of this determination and, in the event an antidumping order is issued, will be excluded from the scope of any such order. Korean nail manufacturers not exporting to the United States, either directly or indirectly, during the period May 1978–March 1979 are also excluded from the scope of this determination and any subsequent antidumping order. This determination applies to all other Korean manufacturers of steel wire nails, as such nails are defined herein, whether exporting to the United States directly or indirectly.

Pursuant to Section 735(c)(1)(B) of the Act, I hereby direct appropriate customs officers to suspend the liquidation of all entries of Korean nails subject to this determination which are entered, or withdrawn from warehouses for consumption on or after May 23, 1980. A cash deposit, bond or other security shall be posted for each entry of steel wire nails (as defined herein) from companies subject to this determination).

This notice is published pursuant to § 353.44(f), Commerce Regulations (19 CFR 353.44(f)).

Robert Herzstein,

Under Secretary for International Trade.

[FR Doc. 80–15926 Filed 5–22–80; 8:45 am]

BILLING CODE 3510–25–M

Certain Iron-Metal Castings From India Preliminary Countervailing Duty Determination

AGENCY: United States Department of Commerce.

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: This notice is to advise the public that it has been preliminarily determined that benefits are granted by the Government of India to manufacturers, producers, or exporters of certain iron-metal castings which constitute a subsidy within the meaning of the countervailing duty law. A final determination will be made not later tan July 29, 1980.

EFFECTIVE DATE: May 23, 1980.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Import Administration Specialist, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230. New telephone number (202) 377–3965.

SUPPLEMENTARY INFORMATION: A petition was received in satisfactory form on February 19, 1980, from James W. Pinkerton, Jr. of Pinkerton Foundry, Inc., Lodi, California, alleging that subsidies are provided by the Government of India on the production and exportation of certain iron-metal castings from India. Such subsidies are alleged to constitute a bounty or grant within the meaning of section 303 of the Tariff Act of 1930, as amended, (93 Stat. 190, 19 U.S.C. 1303) (hereinafter referred to as the Act). It should be noted that India is not a "country under the Agreement" within the meaning of section 701(b). Therefore, section 303 of the Act as amended by section 103 of the Trade Agreements Act of 1979 after referred to as the Trade Act), continues to apply to this investigation. A Notice of Initiation of a Countervailing Duty Investigation was published in the **Federal Register** on March 14, 1980 (45 FR 16521).

Iron-metal castings from India enter the United States free of duty. Therefore, it has been necessary to refer this matter to the United States International Trade Commission for determinations of injury. The United States International Trade Commission made a determination "that there is reasonable indication that an industry in the United States is materially injured by reason of the importation from India of manhole covers and frames, catch basin grates and frames and clean out covers and frames provided for in item number 657.09 of the Tariff Schedules of the United States (TSUS)." 45 FR 25972, April 16, 1980.

The bounties or grants alleged in the petition are as follows:

1. Cash grant program on exports.
2. Tax credit against business and income taxes based on export value.
3. Tax deduction at 150 percent on expenses for overseas export promotion.
4. Remission of Customs duties and excise taxes on machinery used for export production.
5. Subsidized export insurance and export credit available to Indian exporters.
6. Favorable import licenses and foreign exchange treatment.
7. Special incentives granted to manufacturers within free trade zones, including income tax holidays, financing at preferred rates, and cash subsidies by state and national governments.
8. Subsidized inland transportation and subsidized ocean freight.
9. Government underwriting of foreign trade shows.
10. Tax deductions for capital investment reserves for selected industries and new industrial ventures.

1. *Cash compensatory support on Export (CCS).* The Government of India (GOI) provides payments to exporters of iron-metal castings entitled "Cash Compensatory Support on Export". The level of payment is currently 12.5 percent of the f.o.b. value of the exported product. the GOI claims that the payment is a rebate of indirect taxes that is to compensate for indirect taxes paid but not otherwise refunded and has been calculated upon documented actual tax experience.

In determining either the existence of a subsidy or determining the net subsidy, the refund of indirect taxes is accepted under the General Agreement on Tariffs and Trade (see Article VI, paragraph 4) and the Agreement on Interpretation and Application of Articles VI, XVI, XXIII of the General Agreement on Tariffs and Trade, relating to Subsidies and Countervailing Measures, (See Annex A). The legislative history of the Trade Agreement Act of 1979 indicates that Congress was concerned about the Treasury Department practice of offsetting indirect taxes paid from the gross subsidy for exported products. However, the Senate Report (Senate Report No. 96–249, July 17, 1979, pp. 84 and 85) states quite clearly that the limitations on offsets:

> Contained in section 771(6) of the Act are not intended to prohibit the administering authority from determining that export payments are not subsidies, if those payments are reasonably calculated, are specifically provided as non-excessive rebates of indirect taxes within the meaning of Annex A of the Agreement and are directly related to the merchandise exported.

Administrative guidelines have been published by the Department (19 CFR Part 355 Annex 1, para. 2, 45 FR 4949) providing that generally, the payment of

a lump sum calculated and identified as a non-excessive rebate of the indirect tax incidence of the exported product, and its components, will not be treated as a subsidy, provided that the government has reasonably calculted and documented the actual tax experience of the product under investigation. *Ex post facto* rationalizations of export payment programs will not be accepted to determine the appropriateness of the export payments as rebates of indirect taxes paid. Any study which purports to show the linkage between export payments and indirect taxes must (a) have served as the official basis upon which the export rebate was calculated; (b) include a thorough analysis and degree of quantification of tax incidence; and (c) have reflected an undertaking to calculate the tax rebate for purposes other than to satisfy the requirements of U.S. law."

Information adequate to satisfy these criteria has not yet been submitted in this case. In the absence of such data, the refunds under the CCS have been preliminary determined to constitute a subsidy in their full amount, 12.5 percent of the f.o.b. value of the exported merchandise.

2. *Import Permits* (REP). Indian exporters may be entitled to receive permits to import goods up to a percentage of what is exported. In the case of iron castings, the license entitles its holder to 10 percent of the value of thed amount exported. Based on an official publication dated 1978, *Import Policy, April, 1978—March, 1979* the Government of India differentiated REP licenses from Actual User Import licenses, stating:

> The REP licenses will be issued in the name of the Register Exporters only but will not be subject to Actual User condition. The license-holder may transfer the license in favour of any other person. The License Holder himself or such transferee may import the goods permitted therein . . .
>
> The transfer of the license will not require any endorsement or permission from the licensing authority, i.e., it will be governed by the ordinary law.

Utilization of REPS for purposes other than stock replenishment (e.g. transfer) could constitute a subsidy. However, the Government of India has stated that castings are made from indigenous materials and so exports of castings are not eligible for REPS. In light of this information supplied by the Government of India, no subsidy has, at this time, been found to exist. This finding will be subject to confirmation during the verification proceeding.

3. *Duty Drawback.* Based on oral representations made by counsel for the Government of India and information found in a publication, *The New Drawback Manual, 1977,* it appears that Duty Drawback is a nonexcessive rebate of indirect taxes (Central Excises and Salt Act) and therefore has not been considered a subsidy for purposes of this determination. However, prior to a final determination in this case, the facts upon which this duty drawback is paid will have to be verified.

4. *Support for Indigenous Suppliers.* Based on information available concerning Indian export policies it is believed that pig and scrap iron manufacturers may be eligible for REPS and CCS for materials sold for use in castings which are subsequently exported.

Because the Government of India's denial of REP benefits for relied on as best evidence, there is no evidence that pig-iron is eligible for benefits that iron castings are not eligible for.

Therefore, no benefit is presumed to accrue as a pass-through for the benefit of iron castings which is attributable to a reduction in the cost of raw material because of REPS to the materials supplier.

Pig-iron and scrap do not appear to be eligible for CCS benefits. Consequently, it is presumed that there are no CCS benefits provided for scrap iron or pig iron. Therefore, no benefit could accrue to casting manufacturers from a pass through of such benefits.

5. *Market Development Assistance.* Under the Market Development Assistance (MDA) Program, grants in aid for export efforts have been provided. Two organizations, the Engineering Export Promotion Council (EEPC) and the Trade Development Authority (TDA) have received grants which might be applicable to exports of castings from India.

The EEPC has received funds for exhibits in the United States and the operation of the Chicago office. The response from the GOI indicates that the exhibition and the Chicago office operation benefit all engineering products exported to all of North America, and spread over the value of engineering products imported from India to the region covered by the Office. The GOI paid expenses amount to an 0.056 percent subsidy. The EEPC has additionally paid for travel by private castings firms from marketing research here which is roughly 0.021 percent of the value of these castings sold in the U.S. in 1979. It is noted that membership of the EEPC is compulsory and that members must pay dues whether they wish to use EEPC services or not.

The TDA receives grants from the MDA in the same way as does the EEPC. Membership in the TDA handles most compulsory although members are required to pay dues. The TDA handles most manufactured Indian products. The TDA maintains an office in New York City which received funds from the GOI which have been preliminary determined to constitute a subsidy of 0.159 percent. Additional clarifying data is being requested from the GOI. In the absence of the clarifying data, the MDA grants to the EEPC and the TDA have been determined to constitute a subsidy in the amount of 0.24 percent of the f.o.b. value of the exported merchandise.

6. *Kandla Free Trade Zone.* The petition alleged that benefits constituting subsidies were received by manufacturers or exporters of iron-metal castings based on their location within a free trade zone. The GOI response indicates that no manufacturers or exporters of this product are located within such a zone and therfore no benefit may be received.

7. *Freight Subsidies and Income Tax Concessions.* The Government of India was asked it there was any difference in ocean freight tariffs and cargo insurance from Indian ports to ports in the United States between vessels of Indian registry and vessels registered in other countries. The Government of India said there was none. The Government of India was asked if there was any difference in freight rates between castings for domestic use and castings for export for iron castings when shipped between inland points of origin to major ocean ports in India. The Government of India said there was none and there was no rebate or credit for inland freight against other expenses.

The Government of India denied that there were any tax credits against business and/or income taxes based on the value of exports which are applicable to iron castings. However, based on the copending fasteners investigation it has been determined that other tax relief provisions exist which may by germane to this investigation. The GOI has several programs which allow special income tax deductions. These include the Export Markets Development Allowance (EMDA) income tax deduction, a special deduction for capital investment in new equipment, and deductions for the first five years for new industrial undertakings. No definte information is known concerning the extent to which these programs might be utilized by manufacturers or exporters of castings.

The Export Market Development Allowance provides for a deduction

from revenues for income tax purposes equal to one and one-third times the expenses incurred in export transaction. Such a deduction may fall within the Illustrative List of Export Subsidies contained in Annex A of the Agreement incorporated by reference in the Act as Section 771(5)(A) (93 Stat. 177, 19 U.S.C. 1677(5)(A)):

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

The Government of India has claimed that the other two programs should not be considered subsidies since they are not related to exports. The export relation test is no longer in effect. (See para. 4 of Annex 1 to the Commerce Regulations, 19 CFR Part 355 Annex 1, 45 F.R. 4949). If these programs were utilized, were not made available to all industries, and they provide more favorable tax treatment to exporting firms than otherwise allowed under the Indian tax, laws, they would constitute a subsidy. For purposes of this preliminary determination they are considered to constitute a subsidy. Further information on these programs will be developed in arriving at our final determination.

The benefit derived from the above subsidies, for purposes of the preliminary determination, is estimated to be 0.2 percent of the f.o.b. value of the merchandise. This benefit is attributable to the EMDA program. Benefits under the other two programs are currently believed to be negligible.

8. *Preferential Export Financing.* The Government of India allows commercial banks to provide short-term export financing at rates which are considered to be preferential when compared to commercial interest rates presently charged in India. Rates of domestic commercial financing were said to vary between 12.5 and 15 percent or higher depending on the bank, the borrower, and other credit considerations. Pre-shipment export financing is available for periods of up to 270 days at interest rates which are graduated depending on the length of utilization. Post-shipment export financing is available where payments are delayed for at least one year. (A basis of only one year for post-shipment financing was assumed in estimating postshipment export financing benefits.) The financing rate charged to castings exporters is only 8 percent. Information is being requested regarding the actual utilization of the lower rates available on export financing for manufacturers and exporters of the subject castings.

In the absence of other information, the availability of preshipment credit at preferential rates is deemed to constitute a subsidy of 1.81 percent and post-shipment credit is deemed to constitute a subsidy of 7 percent. The total benefit is determined to be 8.81 percent of the f.o.b. price of the exported castings.

On the basis of the analysis made to date of possible subsidies provided by the Government of India, I hereby preliminarily determine that subsidies do exist within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303). It has been further determined that these subsidies on castings amount to 21.75 percent of the f.o.b. value of the exported merchandise.

The amount of subsidy preliminarily found to exist has, in certain respects, been based on incomplete or inadequate information concerning the nature and utilization of specific programs. Where the information provided has been incomplete or inadequate the assumption has been made that a subsidy program exists and has been fully utilized by producers of iron metal castings. To the extent adequate supplementary information is provide in a timely manner and can be verified, the amount of subsidy found to exist may change.

An opportunity to present oral views is being afforded to interested parties in accordance with § 355.35, Commerce Regulations (19 CFR 355.35, 45 FR 4946). This hearing is scheduled to be held, if requested, at the U.S. Department of Commerce, room 3817, 14th and Constitution Avenue, NW., Washington, D.C. 20230, beginning at 10:00 a.m., Tuesday, July 1, 1980. Interested parties who are interested in having such a conference should provide a written request for a conference with the Office of the Deputy Assistant Secretary for Import Administration, room 2800, at the address shown above. These requests shall contain: (1) The name, address, and telephone number of the requester; (2) the number of participants and the reason for attending and (3) a list of the issues to be discussed. All requests must be received no later than 10 days after publication of this notice.

Any written views filed in accordance with § 355.34, Commerce Regulations (19 CFR 355.34, 45 FR 4946) should be filed with the address indicated above, in at least 10 copies. Any written views should be filed not later than June 23, 1980.

In accordance with section 703, Tariff Act of 1930, as amended (93 Stat. 153, 19 U.S.C. 1671b) Customs offices will be advised to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise on or after May 23, 1980. The posting of a cash deposit, bond, or other security, in the amount of 21.75 percent of the f.o.b. value of the merchandise will be required. This suspension of liquidation shall remain in effect until further notice.

This determination is published in accordance with § 355.28, Commerce Regulations (19 CFR 355.28, 45 FR 4943).

May 20, 1980.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-15846 Filed 5-22-80; 8:45 am]

BILLING CODE 3510-25-M

Export Promotion Subcommittee of the President's Export Council; Meeting

Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976) notice is hereby given that a meeting of the Export Promotion Subcommittee of the President's Export Council will be held on Thursday, June 12, 1980, from 9:30 a.m. until 4:30 p.m. in Room 4830 of the Main Commerce Department Building, 14th Street and Constitution Ave., N.W., Washington, D.C. The Council was initially established by Executive Order 11753 of December 20, 1973, subsequently extended by Executive Order 11827 of January 4, 1975, Executive Order 11948 of December 20, 1976, and Executive Order 12100 of December 28, 1978. The Council was reconstituted by Executive Order 12131 of May 4, 1979, to advise the President on matters relating to United States export trade. The Subcommittee has been formed to make recommendations to the Council regarding programs to promote U.S. exports and to create greater export awareness in the U.S. The Subcommittee is composed solely of members of the Council.

The purpose of the meeting is to continue work on ongoing projects of the Subcommittee.

The agenda for the meeting will include discussion of old business including the following projects:

Multiplier programs
Role of Commerce Department export programs
Advertising campaign
Export trading company legislation
Export executive corps
Chamber of Commerce export proposal

A limited number of seats at the meeting will be available to the public on a first-come basis. The public may

file written statement with the Subcommittee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent that time is available.

Copies of the minutes of the meeting and futher information concerning the President's Export Council may be obtained from Ms. Wendy Haimes or Ms. Ellen MacCaffray, Room 4015B, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–5719.

Dated: May 16, 1980.

Peter G. Gould,

Deputy Assistant Secretary for Export Development.

[FR Doc. 80-15802 Filed 5-22-80; 8:45 am]

BILLING CODE 3510-25-M

President's Export Council; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Executive Committee of the President's Export Council will be held on Tuesday, June 17 at 8:30 a.m., in room B354, Rayburn House Office Building, Washington, D.C. The President's Export Council was initially established by Executive Order 11753 of December 20, 1973, subsequently extended by Executive Order 11827 of January 4, 1975, Executive Order 11948 of December 20, 1976, and Executive Order 12110 of December 28, 1978. The President's Export Council was reconstituted by Executive Order 12131 of May 4, 1979, to advise the President on matters relating to United States export trade, including advice on the implementation of the President's National Export Policy.

The agenda for the meeting will be as follows:

Welcoming remarks and brief introduction
Remarks by Cabinet level attendees, Senators and Congressmen
Reports from the Chairmen of the Subcommittees on: GATT and the MTN East-West Trade, Export Promotion, Export Expansion, Export Administration, Agriculture
Discussion
Other organizational business, announcements and plans for next meeting

A limited number of seats at the meeting will be available to the public on a first-come basis. The public may file written statements with the subcommittee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent that time is available.

Copies of the minutes of the meeting and further information concerning the President's Export Council may be obtained from Ms. Wendy Haimes or Ms. Elizabeth Ruskin, room 4015B, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–5719.

Dated: May 15, 1980.

Peter G. Gould,

Deputy Assistant Secretary for Export Development.

[FR Doc. 80-15801 Filed 5-22-80; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Proposed Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the **Federal Register** on March 19, 1979 (44 FR 16466), the National Bureau of Standards announced the exclusion criteria and procedures for maintaining an exclusion list pertaining to Federal Information Processing Standards Publication 60, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; and Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems. The exclusion list also pertains to Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems, approval of which by the Secretary of Commerce was announced in the **Federal Register** on August 27, 1979 (44 FR 50078). The March 19, 1979, notice stated that one the exclusion list was established, interested parties would be invited to submit to the Director, Institute for Computer Sciences and Technology (ICST), comments or recommendations regarding that list, and that notice of any proposed changes in the exclusion list would be published in the **Federal Register.**

As a result of a review and analysis of comments received since the publication in the **Federal Register** on February 27, 1980 (45 FR 12862) of changes to the exclusion list, NBS is proposing the following additions to the exclusion list:

Manufacturer and Model

IBM Corp., 5280 Distributed Data System.
Rolm, MSE/30 System.
Rolm, 1603A System.
Rolm, 1602B System.
Rolm, 1606 System.
Rolm, 1650 System.
Rolm, 1664 System.
Rolm, 1666 System.
Vydec, 1200 Series.
Vydec, 1400 Series.
Vydec, 1800 Series.
Vydec, 2000 Series.
Vydec, 4000 Series.
Zilog, MCZ Series.
Zilog, ZDS Series.

Interested parties will be allowed until July 7, 1980, to submit written comments regarding the proposed changes. Such written comments should be submitted to the Director, ICST, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Following review of comments received in response to this notice, NBS will make a determination on the proposed changes and will announce that determination in a subsequent notice published in the **Federal Register.**

NBS is maintaining a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of the proposed changes and the announcement of the determination on the proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments in response to this notice.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: May 19, 1980.

Thomas A. Dillon,

Acting Director.

[FR Doc. 80-15837 Filed 5-22-80; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmosphere Administration

Acceptance of Competitive Applications for Assistance With Marine Pollution Research, Development and Monitoring; Extension of Closing Date

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), Office of Research and Development, Office of Marine Pollution Assessment.

ACTION: Correction.

SUMMARY: On May 13, 1980, the Office of Marine Pollution Assessment of NOAA published a notice in the **Federal Register** (45 FR 31457) inviting applications for participation in two programs dealing with marine pollution research and development and monitoring. The closing date for receipt

of applications was announced as May 16, 1980. The closing date for applications is being extended until June 23, 1980.

DATE: June 23, 1980, is the closing date for receipt of applications.

ADDRESS: Office of Marine Pollution Assessment, NOAA, Old Biology Building, State University of New York, Stony Brook, N.Y. 11794.

FOR FURTHER INFORMATION CONTACT: Harold Stanford (516) 751–7002.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

May 20, 1980.

[FR Doc. 80–15844 Filed 5–22–80; 8:45 am]

BILLING CODE 3510–12–M

National Marine Fisheries Service, Marine Mammals; Receipt of Application for General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. fishery conservation zone, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Sovrybflot, Moscow, U.S.S.R. has applied for a Category 1: "Towed or Dragged Gear" general permit.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.

Interested parties may submit written views on the application within 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: May 20, 1980.

William Aron,

Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80–15909 Filed 5–22–80; 8:45 am]

BILLING CODE 3510–22–M

Office of the Secretary

Economic Advisory Board; Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act as amended, 5 U.S.C. App. 1976, notice is hereby given that the meeting of the Department of Commerce Economic Advisory Board will be held on Tuesday, June 24, 1980, from 9:30 a.m. to 12:00 noon in Room 4830 Main Commerce Building, and from 1:30 to 4:00 in Room 6802 Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Board was established by the Secretary of Commerce on January 12, 1967. The purpose of the Board is to advise the Secretary of Commerce on economic policy issues. The intended agenda for this meeting is as follows:

- A review of the economic outlook by major sector.
- A discussion of the outlook for prices and employment and of strategies for sustaining economic growth and dealing with inflation.

A limited number of seats will be available to the public on a first-come, first-serve basis. Public participation will be limited to request for clarification of items under discussion. Additional statements or inquiries may be submitted to the chair before or after the meeting. Copies of the minutes will be available on request 30 days after the meeting.

Additional information concerning this meeting may be obtained by contacting Ms. Virginia R. Marketti, Office of the Chief Economist for the Department of Commerce, Room 4848, Department of Commerce, Washington, D.C. 20230 (202) 377–3523.

Dated: May 19, 1980.

Courtenay M. Slater,

Chief Economist for the Department of Commerce.

[FR Doc. 80–15789 Filed 5–22–80; 8:45 am]

BILLING CODE 3510–17–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1980 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: May 23, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATON: On February 29, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (45 FR 13499) of proposed addition to Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1980:

Class 7510

Envelope, Transparent
7110–00–782–6274
7510–00–782–6275
7510–00–782–6276

C. W. Fletcher,

Executive Director.

[FR Doc. 80–15847 Filed 5–22–80; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1980; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1980 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 25, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested parties an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1980, November 27, 1979 (44 FR 67925):

Class 6530

Bag, Urine, Collection
6530–00–761–0932
6530–00–761–0936

SIC 7641

Furniture Rehabilitation
Lawton, Oklahoma (55 miles)

C. W. Fletcher,

Executive Director.

[FR Doc. 80-15848 Filed 5-22-80; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Product Safety Advisory Council; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Meeting: Product Safety Advisory Council.

SUMMARY: This notice announces a meeting of the Product Safety Advisory Council on Monday, June 9, 1980, 9:30 a.m.—5:00 p.m., and Tuesday, June 10, 1980, 9:30 a.m.—3:30 p.m. The meeting will be held at 1111 18th Street, NW, Washington, DC 20207, Third Floor Conference Room.

FOR FURTHER INFORMATION CONTACT: Barbara Rosenfeld, Director, Office of Public Participation, Office of the Secretary, Suite 300, 1111 18th Street, NW, Washington, DC 20207, 202/634-7700.

SUPPLEMENTAL INFORMATION: The Product Safety Advisory Council was established by Section 28 of the Consumer Product Safety Act, which provides that the Commission may consult with the Council before prescribing a consumer product safety rule or taking other action under the Act.

The proposed agenda for the June 9-10 meeting will include future CPSC policy initiatives, the petitions process, and the state designee program. For further information on agenda topics or schedule, contact Ms. Rosenfeld at the address and telephone number noted above.

The meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentation to the Product Safety Advisory Council should notify the Office of the Secretary (see address above) by June 2, 1980. The notification should list the name of the individual who will make the presentation, the person, the company, group or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to members of the Council may be allowed by the presiding officer.

Dated: May 19, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-15768 Filed 5-22-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Preferred Alternative Location for a Strategic Submarine Base at the Naval Submarine Support Base, Kings Bay, Ga.; Public Hearing and Availability of Draft Environmental Impact Statement

Notice is hereby given pursuant to the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality Guidelines, 40 CFR Part 1500, that a series of public hearings at three different locations will be held for the purpose of providing the public with relevant information on a proposed addition of a shore-based Fleet Ballistic Missile (FBM) Submarine Squadron to the existing Naval Submarine Support Base located at Kings Bay, Georgia, and to afford the public an opportunity to present their views on the proposed Navy project. Joint hearings are planned with the U.S. Army Corps of Engineers, who will also take comments relative to the dredging requirements proposed for this site as part of their procedures to issue a dredging permit. In accordance with Executive Orders 11988 and 11990, comments will be entertained during the hearings relative to construction in the coastal flood plain. Hearings will be on the following dates, at the locations and times specified.

June 17, 1980—Camden County High School, Intersection Route 40 and Spur 40, St. Marys, GA—7:00 p.m.

June 18, 1980—Jacksonville Civic Auditorium, The Theater, 300 Water Street, Jacksonville, FL—7:00 p.m.

June 19, 1980—Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA—7:00 p.m.

Public hearings are being held at three sites in order that all persons, municipalities, agencies and groups who so desire are afforded the opportunity to comment on the proposed action.

The hearing concerning the site will be conducted by Captain Richard A. Petersen, U.S. Navy, of the Trident System Project Office, and will include a presentation on the Navy's proposed action, expected environmental impact, alternatives, and what may be expected for the future.

The proposed project provides for the construction and operation of an Atlantic Coast Strategic Submarine Base at the current Naval Submarine Support Base, Kings Bay, GA. The proposed action is the basing of one Trident (or follow-on SSBN) submarine squadron including strategic and defensive weapons facilities, refit industrial support, training facilities, waterfront support, relocation of some existing waterfront facilities, administrative and personnel support, and on-base housing. Torpedo maintenance and Trident I missile production are expected to remain in Charleston, South Carolina; however, the impacts of constructing additional defensive weapons and Trident II missile facilities at Kings Bay are also addressed. This action also considers the possibility of future construction on the site to accommodate one additional tender-supported Poseidon submarine squadron or an additional shore-supported Trident submarine squadron.

The proposed action is expected to have a number of environmental impacts. Dredging (and ship traffic, to a limited extent) would alter water circulation, substrate erosion, and deposition patterns. Some adverse changes in dissolved oxygen, turbidity, organic material concentration, or benthic organism population are expected. Industrial and waterfront operations have the potential for increasing levels of chemical and oil contamination; however, collection and treatment systems will be used to minimize that potential. Small increases in local vicinity air pollutant concentrations are expected from thermal energy generation and increased vehicular traffic. Dredged materials disposal and facilities construction would cover about 1800 acres, primarily pine timber land. Additionally, some 80 acres of wetland systems, including 24 acres of salt marsh, would be lost. Plants and animals found in these habitats would be adversely affected; however, reclamation of dredged materials disposal areas would partially offset the adverse effect.

The proposed action is expected to have significant economic impacts. Over 7000 primary and 3000 secondary new jobs would be created with an annual payroll of over $150 million. The expected regional population growth of about 22,000 would cause impacts to housing, transportation, and all public services. The most significant impacts and changes would occur in Camden County, GA, which is primarily rural in nature.

The following procedures will be employed during the public hearings. For

record purposes, all persons attending the hearings will be asked to provide their names upon entering the hearing. Speakers wishing to comment at the hearing will have five minutes each, and group spokespersons are encouraged to present the consolidated views of their group. Each speaker will identify himself and any organization he may be representing. One speaker may not relinquish time to another. Individuals and organizations wishing to submit written statements to be included in the hearing record are encouraged to do so by June 10, 1980, or such statements may be presented to the Hearing Officer during the hearing. Pre-registration of speakers is desired, and should be made in person or writing. Speakers may also register at the attendance desk at the hearing. The name and title of the speaker for organizations should be included in the pre-registration. The closing date for including additional written statements is the Navy hearing record is 10 calendar days after the date of the individual hearings. Speaker pre-registration and submission of written statements should be addressed to:

Commander E. R. Wilson, U.S. Navy, Officer in Charge of Construction, Trident, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332.

Detailed information on the proposed action and anticipated environmenal impacts are documented in the Draft Supplement Environmental Impact Statement (DSEIS) for the proposed project. Copies of the DSEIS have been widely distributed and are available to the public at the following locations should perusal of the DSEIS be desired:

Office in Charge of Construction, Trident, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, Va. 22332.
Public Affiars Office, Naval Submarine Support Base, Kings Bay, Ga. 31547.
Atlanta, Ga., Public Library.
University of Georgia Library, Athens, Ga.
St. Marys, Ga., Public Library.
Kingsland, Ga., Public Library.
Chatham County, Ga., Public Library.
Okefenokee Regional Library (Waycross, GA).
Brunswick, Ga., Regional Library.
St. Simons, Ga., Library.
Waycross, Ga., Public Library.
Folkston, Ga., Public Library.
Fernandina Beach, FL., Public Library.
Jacksonville, FL., Public Library.

Dated: May 21, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant, Judge Advocate, General (Administrative Law).

[FR Doc. 80-15976 Filed 5-22-80; 8:45 am]

BILLING CODE 3810-71-M

Office of the Secretary

Privacy Act of 1974; Deletions and Amendments to Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of deletion and amendments to systems of records.

SUMMARY: The Defense Logistics Agency (DLA) proposes to delete three and amend five systems of records subject to the Privacy Act of 1974. The specific changes to the systems being amended are set forth below followed by the systems published in their entirety as amended.

DATES: Proposed actions shall be effective June 22, 1980 unless public comments result in a contrary determination requiring republication for further comments.

ADDRESS: Send any comments to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Smith, Chief, Administrative Management Division (DLA-XA), Defense Logistics Agency, HQ DLA, Cameron Station, Alexandria, Va. 22314 Telephone 202-274-6250.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's systems of records inventory as prescribed by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), have been published in the Annual Compilation at 44 FR 74719, December 17, 1979. The systems of records being amended are not deemed to be within the purview of 5 U.S.C. 552a(o) of the Privacy Act which requires submission of a new or altered system report to Office of Management and Budget guidance set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

May 19, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

Deletions

S334.05 DLA-L

SYSTEM NAME:

334.05 Civilian Personnel Administration Career Program (44 FR 74746) December 17, 1979

REASON:

Records maintained under this system have been terminated.

S334.10 DLA-KT1

SYSTEM NAME:

334.10 Central Inventory, Comptroller/ Financial Management Career Program (44 FR 74747) December 17, 1979

REASON:

Records maintained under this system have been terminated.

S339.10 DLA-C

SYSTEM NAME:

339.10 Auditor Profile (44 FR 74751)

REASON:

Records maintained under this system have been terminated.

AMENDMENTS

S214.20DLA-L

SYSTEM NAME:

214.20 Emergency Assignment and Training Records (44 FR 74734) December 17, 1979

CHANGES:

CATEGORIES OF RECORDS IN THE SYSTEM:

Insert "Social Security Number, home address" so that it now reads "Individuals' names, grades, Social Security Number, home address, organizational locations, . . ."

ROUTINE USES:

Add "emergency recall rosters" so that it now reads "These include emergency recall rosters, the war and emergency support plan . . ."

SYSTEM MANAGER(S) AND ADDRESS:

Delete: "Military Plans" and substitute: "Command and Control".

S322.10DLA-LZ

SYSTEM NAME:

Defense Manpower Data Center Data Base (44 FR 74740) December 17, 1979

CHANGES:

ROUTINE USES:

Add new Routine Use; "To the Office of Child Support Enforcement, Department of Health, Education, and Welfare, pursuant to Pub. L. 93-647, for the purpose of assisting state child support enforcement offices in locating absent parents in order to establish and/or enforce child support obligations."

Add new Routine Use; "To the Director of the Selective Service System for use in wartime or emergency mobilization and for mobilization planning."

S434.15DLA-C

SYSTEM NAME:

434.15 Automated Payroll Cost and Personnel System (APCAPS) (44 FR 74757)

CHANGES:

SYSTEM NAME:

Insert: after (APCAPS) "—Segment I".

ROUTINE USES:

Add new Routine Use; "Supervisors and managers of agencies and activities other than DLA who receive payroll/cost accounting support from APCAPS—to determine leave usage, manpower allowances, labor distributions and costs.

After "Local Courts—to determine" delete: "disposition of pay withheld" and substitute: "the withholding of pay".

SAFEGUARDS:

After "* * * accessible only to" delete: "office" and substitute: "agency".

S434.20DLA-C

SYSTEM NAME:

343.20 Mechanization of Contract Administration Services—1B Payroll (MOCAS 1B) (44 FR 74758)

CHANGES:

ROUTINE USES:

After "manpower allocations." delete: "." and insert "and labor distribution."

Add new Routine Use: "Supervisors and managers of agencies and activities other than DLA who receive payroll/cost accounting support from MOCAS 1B—To determine leave usage, manpower allocations, labor distributions and costs."

RECORD ACCESS PROCEDURES:

Delete: "Written requests must contain the full name of the employee. Employees making a personal request for information must present identification, i.e., employee badge, driver's license, etc. Official mailing addresses are in the Department of Defense directory in the appendix to the DLA system of record notices." and substitute: "Employees making a personal request for information must present identification. Official mailing addresses are in the Department of Defense directory in the appendix to the DLA system or record notices. Written requests must contain the full name of the employee."

S434.87DLA-C

SYSTEM NAME:

434.87 Debt Records for Individuals (44 FR 74759)

CHANGES:

ROUTINE USES:

Add new Routine Use: "If debtors do not enter into satisfactory payment arrangements or demonstrate a legitimate dispute within a specific period, the debt will be reported to a commercial credit bureau."

In last sentence after "* * * U.S. General Accounting Office." add: "Department of Justice or a United States Attorney for further collection action."

S214.20DLA-L

SYSTEM NAME:

214.20 Emergency Assignment and Training Records

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency (DLA) and all DLA field activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present DLA civilian/military personnel who have volunteered for, or been designated to perform, some duty or assignment in time of emergency that is not regularly included in their present duties. Former personnel who have recently left the activity may also be included to the extent that the records have not yet been purged of their names.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals' names, grades, Social Security Number, home address, organizational locations, titles, office and residential phone numbers, training as pertaining to emergency duties, authority to operate Government vehicles, emergency assignment, agreement to perform emergency duties, and similar information related to the emergency assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., 402 through 405, National Security Act of 1947; 50 U.S.C., App. 2251, Federal Civil Defense Act of 1950; E.O. 10952, Assigning Civil Defense Responsibilities to the Secretary of Defense, E.O. 11490, Assigning Emergency Preparedness Functions to Federal Departments and Agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by the management and supervisory personnel of DLA in the day-to-day planning and management of emergency actions. These include emergency recall rosters, the war and emergency support plan, staffing of fallout shelters, physical security of the post or other premises, and similar purposes. The use might involve emergencies of both a civil or military nature, in time of peace or war, and would also include natural as well as man-made disasters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and card files.

RETRIEVABILITY:

Accessed by organizations, type of emergency assignment, or individual name.

SAFEGUARDS:

Maintained in areas accessible only to authorized DLA management and staff, and afforded appropriate protection at all times.

RETENTION AND DISPOSAL:

Continuous updating/purging to reflect current information.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Command and Control Division, HQ, DLA; and Commanders, DLA Primary Level Field Activities and subordinate field activities.

NOTIFICATION PROCEDURE:

Written or personal requests should be directed to the SYSMANAGER.

RECORD ACCESS PROCEDURES:

Individuals should contact SYSMANAGER. Official mailing addresses are in the DoD directory in the appendix to the DLA systems notice. Written requests should include the requestor's full name, job title and name of organization where employed or formerly employed. For personal visits, employee should be able to provide some acceptable identification such as driver's license or employee identification badge.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from the employee, official personnel records, and present and former supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

S322.10DLA–LZ

SYSTEM NAME:

Defense Manpower Data Center Data Base

SYSTEM LOCATION:

Primary location: W. R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940.

Back-up locations for processing: Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D.C. 20330.

U.S. Army Management Systems Support Agency, Room BD972, The Pentagon, Washington, D.C. 20310.

National Military Command Systems Support Center, Room BE685, The Pentagon, Washington, D.C. 20331.

Back-up files maintained at two offices of the Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314 and 2nd Floor, 550 Camino El Estero, Monterey, CA 93940.

Selected historic files are maintained at Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D.C. pursuant to court order in IBM anti-trust case. These files will be withdrawn from current location when legally permissible.

Decentralized segments—military personnel centers of the services; selected civilian contractors with research contracts in manpower area; other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel who served on active duty from July 1, 1968 and later; or who have been a member of a reserve component since July 1975; or are retired military; participants in Project 100,000 and Project Transition and the evaluation control groups for these programs; all individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examinating Station from July 1, 1970, and later; DoD civilian employees or civilian employees separated since January 1, 1971; all veterans who have utilized Vietman-era GI Bill education and training entitlements, who visited a State Employment Service office since July 1, 1971, or who participated in a Department of Labor special training program since July 1, 1971; all individuals who ever participated in an educational program sponsored by the U.S Armed Forces Institute, all individuals who participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969, individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the DHEW, Office of Education and Longitudinal Survey, individuals responding to Recruiting Advertisements since January 1978.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Service Number, Selective Service Number, Social Security Account Number, demographic information such as hometown, age, sex, race, and educational level; civilian occupational information, military personnel information such as rank, length of service, military occupation; aptitude scores, post-service education, training, and employment information for veterans; participation in various in-service education and training programs, military hospitalization records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the system of records is to provide a longitudinal statistical analysis capability for assessing military manpower trends and evaluation programs impacting of military personnel, potential enlistees, and veterans.

Defense Manpower Data Center—used to analyze accession patterns and trends, promotion and occupation patterns and trends, loss patterns and trends, qualification rates, effectiveness of recruiting programs, participation in education and training programs, force characteristics, post-service experiences of veterans, evaluation of military special pays and bonuses; evaluation of special programs affecting military personnel; to select sample population for surveys; to provide statistical data to OMB, GAO, the Military Services, DoD civilian contractors, educational institutions and other Federal agencies.

Personnel Research and Personnel Management activities of the Military Services—uses are same as those specified above.

Veterans Administration, Management Sciences Staff, Reports and Statistics Service, Office of the Comptroller—used to select sample for surveys asking veterans about the use of veterans benefits and satisfaction with VA services, and to validate eligibility for VA benefits.

Office of Research and Statistics, Social Security Administration—used for statistical analyses of impact of military service and use of GI Bill benefits on long term earning.

DoD Civilian Contractors— used by contractors performing research on manpower problems for statistical analyses.

Aggregate data and/or individual records in the record system may be transferred to other Federal agencies having legitimate use for such information and applying appropriate safeguards to protect data so provided.

Records may be disclosed to the Office Personnel Management (OPM) concerning pay, benefits, retirement deductions; and other information necessary for the OPM to carry out its Government-wide personnel management functions.

Any record contained in the system of records may be transferred to any other component of the Department of Defense having the need-to-know in the performance of official business.

Name and address information of former military personnel obtained from the Veterans Administration or the Military Department may be released to a number of DoD Components for use in attempting to recruit and reenlist prior service personnel through direct contact methods. These components are as follows: U.S. Army Recruiting Command; U.S. Army Forces Command; Navy Recruiting Command; Chief of Naval Personnel; Chief of Naval Reserve; U.S. Air Force Recruiting Service; U.S. Air Force Tactical Air Command; Headquarters Air Force Reserve; National Guard Bureau; Headquarters, U.S Maine Corps; District Directors, U.S. Marine Corps; Commanding General, 4th Marine Division; Commanding General, 4th Marine Air Wing; Commandant, U.S Coast Guard.

Information on the name, rank, social security accounting number, duty station, birth date, retirement date, and retirement annuity may be disclosed to the Department of Health, Education, and Welfare (DHEW) for the following purposes:

To the Office of Education, DHEW, for the purpose of identifying individuals who appear to be in default on their guaranteed student loans so as to permit the DHEW to take action, where appropriate, to accelerate recoveries of defaulted loans.

To the Bureau of Supplemental Security Income, Social Security Administration, DHEW, in order to verify and adjust as necessary payments made to active and retired military members under the Supplemental Security Income Program.

To the Office of the Inspector General, DHEW, for the purpose of identifying

and investigating DoD employees (military and civilian) who may be improperly receiving funds under the Aid for Families of Dependent Children program.

To the Office of Child Support Enforcement Department of Health, Education, and Welfare, pursuant to PL93–647, for the purpose of assisting state child support enforcement offices in locating absent parents in order to establish and/or enforce child support obligations.

To the Director of the Selective Service System for use in wartime or emergency mobilization and for mobilization planning.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape.

RETRIEVABILITY:

Retrievable by name, SSAN, age, occupation, or any other data element contained in system.

SAFEGUARDS:

Primary location—at W. R. Church Computer Center, tapes are stored in a locked cage in machine room, which is a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At back-up locations in Alexandria, VA and Monterey, CA tapes are stored in rooms protected with cypher locks, buildings are locked after hours, and only properly cleared and authorized personnel have access.

The Air Force Data Services Center, the U.S. Army Management Systems Support Agency, and the National Command Systems Support Center are all Top Secret facilities.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

NOTIFICATION PROCEDURE:

Information may be obtained from: Deputy Chief, Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940. Telephone: Area Code 408/646–2951.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

Written requests for information should contain the full name, Social Security Account Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as drivers license, or military or other ID card.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The Military Services, the Veterans Administration, the Office of Education of the Department of HEW, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

S434.15DLA–C

SYSTEM NAME:

434.15 Automated Payroll Cost and Personnel System (APCAPS)—Segment I

SYSTEM LOCATION:

Records maintained at Defense Logistics Agency (DLA) Centers and Depots.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian and military personnel who have been paid or costed by APCAPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained in manual and mechanical files for all data which affect an employee's pay, deductions, employer contributions, leave, retirement, position status, or cost accumulation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, DOD Dir 5105.22.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used in preparing payrolls, cost and manpower reports.

Information is used by: Agency supervisors and managers—to determine leave usage, manpower allocations and labor distribution. Supervisors and managers of agencies and activities other than DLA who receive payroll/cost accounting support from APCAPS—to determine lease usage, manpower allocations, labor distributions and costs.

Payroll office—to compute and control payroll and allocate labor costs.

Personnel office—to determine leave usage and changes that affect an employee's pay.

Security office—to determine location of employees.

Disbursing office—to determine the distribution of checks and bonds.

Financial Institutions—to determine disposition of net pay or allotments of pay.

Treasury Department—to determine registration of bonds and federal tax allocation.

Unions, charities, and insurance organizations—to determine participation in these organizations.

Office of Personnel Management—to determine status of employee and for disposition of retirement records.

State and local taxing authorities—to determine tax liability.

Non-government organizations—to verify employment and credit data furnished to financial institutions by the employee.

Bureau of Employment Compensation—to process employee disability claims.

State employment offices—to submit data for unemployment compensation.

Local courts—to determine the withholding of pay for garnishment of wages.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm, magnetic tape, disc pack, computer paper printouts, vertical file cards, paper records in file folders.

RETRIEVABILITY:

Hardcopy documents are filed by payroll block and/or alphabetically by last name. Data stored on mechanized storage devices are retrieved by SSAN.

SAFEGUARDS:

Access to mechanical records is limited to authorized DLA data systems personnel. All other records are maintained in areas accessible only to agency personnel.

RETENTION AND DISPOSAL:

Retention of data varies from 1 to 3 days for mechanical working files up to an employee's total length of service with an activity for permanent payroll information.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, DLA.

NOTIFICATION PROCEDURE:

Written or personnel requests for information may be directed to the Chief, Payroll Branch, Accounting and Finance Division, Office of Comptroller at each DLA Center and Depot.

RECORD ACCESS PROCEDURES:

Written requests must contain full name and social security account number of the employee. Employees making a personel request must present identification. Official mailing addresses are in the Department of Defense directory in the appendix to the DLA systems of record notices.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the Sysmanager.

RECORD SOURCE CATEGORIES:

Employee's supervisors, civilian personnel office, military personnel office, financial institutions, local courts, military services or other government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

S434.20DLA-C

SYSTEM NAME:

434.20 Mechanization of Contract Administration Services—1B Payroll (MOCAS 1B)

SYSTEM LOCATION:

Records maintained at all Defense Contract Administration Service Regions (DCASRs) less Philadelphia (DCRP).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian personnel who have been paid by the DCASRs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained in manual and mechanical files for all data which affect an employee's pay, deductions, employer contributions, leave, retirement, or position status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, DOD Dir 5105.22.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used in preparing payrolls.

Information is used by:

Agency supervisors and managers—to determine leave usage, manpower allocations and labor distribution.

Supervisors and managers of agencies and activities other than DLA who receive payroll/cost accounting support from MOCAS 1B—To determine leave usage, manpower allocations, labor distributions and costs.

Payroll Office—to compute and control payroll.

Personnel office—to determine leave usage and changes that affect an employee's pay.

Security office—to determine location of employees.

Disbursing office—to determine the distribution of checks and bonds.

Financial Institutions—to determine disposition of net pay or allotments of pay.

Treasury Department—to determine registration of bonds and federal tax allocation.

Unions, charities, and insurance organizations—to determine participation in these organizations.

Office of Personnel Management—to determine status of employee and for disposition of retirement records.

State and local taxing authorities—to determine tax liability.

Non-government organizations—to verify employment and credit data furnished to financial institutions by the employee.

Bureau of Employment Compensation—to process employee disability claims.

State employment offices—to submit data for unemployment compensation.

Local courts—to determine the withholding of pay for garnishment of wages.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm, magnetic tape, disc pack, computer paper printouts, vertical file cards, paper records in file folders.

RETRIEVABILITY:

Hardcopy documents are filed by payroll block and/or alphabetically by last name. Data stored on mechanized storage devices are retrieved by name, employee number or SSAN.

SAFEGUARDS:

Access to mechanical records is limited to authorized DLA data systems personnel. All other records are maintained in areas accessible only to agency personnel.

RETENTION AND DISPOSAL:

Retention of data varies from 1 to 3 days for mechanical working files up to an employee's total length of service with an activity for permanent payroll information.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, DLA.

NOTIFICATION PROCEDURE:

Written or personal requests for information may be directed to the Chief, Payroll and Travel Branch, Accounting and Finance Division, Office of Systems and Financial Management at DCASRs.

RECORD ACCESS PROCEDURES:

Employees making a personal request for information must present identification. Official mailing addresses are in the Department of Defense directory in the appendix to the DLA system of record notices. Written requests must contain the full name of the employee.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the Sysmanager.

RECORD SOURCE CATEGORIES:

Employee's supervisors, civilian personnel office, financial institutions, local courts, military services or other government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

S434.87DLA-C

SYSTEM NAME:

434.87 Debt Records for Individuals.

SYSTEM LOCATION:

Primary System: Accounting and Finance Division, Finance Systems Branch, Headquarters, Defense Logistics Agency (HQ DLA).

Secondary System: DLA Primary Level Field Activities (PLFAs).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian and military personnel who are indebted to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative reports with supporting documentation; employee's financial condition; personnel actions, and requests for waiver.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 951–953 (Federal Claims Collection Act of 1966); Public Law 90–616; Public Law 92–453.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used to collect monies owed the U.S. Government. Information is maintained to support case files; financial statements provide an understanding of individuals' financial condition with respect to request for deferment of payments. If debtors do not enter into satisfactory payment arrangements or demonstrate a legitimate dispute within a specific period, the debt will be reported to a commercial credit bureau. When debts are uncollectible, case files are forwarded to the U.S. General Accounting Office, Department of Justice, or a United States Attorney for further collection action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by employee name.

SAFEGUARDS:

Records are maintained in areas accessible only to office personnel.

RETENTION AND DISPOSAL:

Records are destroyed ten years after all aspects of the case are closed. Collected in full claims are retained for six months and then destroyed. Claims terminated, compromised or waived are retained for three years and subsequently retired to Federal Records Center, held for remaining years and destroyed. Claims settled by U.S. General Accounting Office, retained one year after settlement and retired to Federal Records Center, held for remaining years and retired.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Finance Systems Branch, Accounting and Finance Division, Office of Comptroller, HQ DLA.

NOTIFICATION PROCEDURE:

Written or personal requests for information may be directed to the Sysmanager.

RECORD ACCESS PROCEDURES:

Official mailing address is in the DOD Directory in the appendix to the DLA systems notice. Written requests from individuals should contain their full name, current address and telephone number. For personal visits, the individual should be able to provide acceptable identification, such as an employee badge or driver's license, etc.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the Sysmanager.

RECORD SOURCE CATEGORIES:

Primary Level Field Activities, civilian and military personnel offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-15774 Filed 5-22-80; 8:45 am]

BILLING CODE 3620-01-M

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notice of a new record system.

SUMMARY: The Office of the Secretary of Defense is adding a new system of records to its inventory of record systems subject to the Privacy Act. This new system is identified as DUSDPR 02, entitled: "Special Personnel Security Cases" and is set forth below in its entirety.

DATES: This system shall become effective as proposed without further notice on June 22, 1980 unless comments are received on or before June 22, 1980, which would result in a contrary determination and require republication for further comments.

ADDRESS: Send comments to the System Manager identified in the record system.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Nash, Chief, Records Management Division, Rm. 5C-315, The Pentagon, Washington, D.C. 20301, telephone 202-695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record system notices inventory as prescribed by the Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 79-37052 (44 FR 74088), December 17, 1979.
FR Doc. 80-8135 (45 FR 17057), March 17, 1980.

The Office of the Secretary of Defense has submitted a new system report dated February 5, 1980, for this new record system under the provisions of 5 U.S.C. 552a(o) of the Privacy Act which requires submission of a new system report and in accordance with Office of Management and Budget (OMB) Circular A-108, Transmittal Memoranda No. 1 and No. 3, dated September 30, 1975, and May 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of records under the Privacy Act of 1974. This OMB guidance was set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

May 19, 1980.

DUSDPR 02

SYSTEM NAME:

Special Personnel Security Cases.

SYSTEM LOCATION:

Security Plans and Programs Directorate, Office of the Deputy Under Secretary of Defense (Police Review), ODUSD (PR), Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with the DoD, upon whom an investigation has been conducted by a Department of Defense (DoD) Component investigative organization authorized to conduct personnel security investigations; other investigative organizations of the Federal Government; or individuals who have been the subject of a DoD Component personnel security determination, or who have had access to DoD classified information, whenever the investigation, personnel security determination, or access involves unique circumstances having special significance with respect to DoD personnel security policy. Also, individuals for whom waivers have been granted from specific provisions of the Industrial Security Regulation (5220.22-R) and/or Industrial Security Manual (5220.22-M).

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements of personal history; investigative reports; adjudicative findings; intra-office memoranda; policy interpretations; memoranda recommending courses of action; legal opinions, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal users, uses, and purposes: This system will be used as basis for Security Plans and Programs Directorate staff access to determine the need for

overall personnel security policy revision or adjustment; to ensure that component personnel security determinations are consistent with DoD personnel security program policy; to assure that personnel security investigations conducted by the Defense Investigative Service (DIS), the National Security Agency (NSA), and the Military Departments are in compliance with DoD personnel security investigative policy; and to provide precedents for use in determining whether to grant waivers of the provisions of the Industrial Security Regulation and/or Industrial Security Manual.

External users, uses, and purposes: See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper records are in file folders.

RETRIEVABILITY:

Records are filed alphabetically by last name of the subject of the investigation or personnel security determination having special significance with respect to DoD personnel security policy. Also, records are filed alphabetically by last name of the personnel for whom waivers have been granted under the Industrial Security Program.

SAFEGUARDS:

Records are stored in security combination lock file containers, and are accessible only by Security Plans and Programs personnel who are properly cleared and who are the official authorized users.

RETENTION AND DISPOSAL:

Routine investigations are destroyed 15 years after the date of the last action. Those involving significant incidents are destroyed 25 years after the date of the last action.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Plans and Programs Directorate, Office of Deputy Under Secretary of Defense (Policy Review), Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Office of the Deputy Under Secretary of Defense (Policy Review), Security Plans and Programs Directorate, Room 3C271, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3969.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Office of the Deputy Under Secretary of Defense (Policy Review), Security Plans and Programs Directorate, Room 3C277, Pentagon, Washington, D.C. 20301.

Written requests for information should contain the full name of the individual, date and place of birth, Social Security Number (SSN), and notarized signature.

The records requested may be made available to individuals for review at the following location: Security Plans and Programs Directorate, ODUSD (PR), Room 3C277, Pentagon, Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is obtained from record subjects; Federal Bureau of Investigation; Office of the Secretary of Defense; Organization of the Joint Chiefs of Staff; DoD Defense Agencies; and the Military Departments, including investigative reports, inter and intra Department memoranda and letters, case analyses, memoranda for the record, and other correspondence related to the cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5).

[FR Doc. 80-15775 Filed 5-22-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of Norway.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following retransfer RTD/EU(NO)-30, from Norway to the United Kingdom, 917 grams Uranium, containing 83.8 grams U-235 (9.138%) and 2.3 grams Plutonium, for destructive examination. This material was originally supplied to Norway by the United States for irradiation, and after examination in the United Kingdom it is planned to return the material to the United States for ultimate disposal.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 21, 1980.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Programs.

[FR Doc. 80-16002 Filed 5-22-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-R-80-12]

State Set-Aside Monthly Report

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Form and Public Hearing.

SUMMARY: The Economic Regulatory Administration (FRA) of the Department of Energy (DOE) gives notice of its intent to establish a monthly reporting requirement applicable to state energy offices participating in the state set-aside program. The new proposed form ERA-471 will solicit monthly data on total volumes available, assigned, and released by state offices under the program.

Recent experience has confirmed the value of the flexibility available through the set-aside program to allocate product during times of localized shortages. We believe that the collection of accurate data on the operation of this aspect of the allocation program will enable us to improve the ability of the ERA and the state offices to prepare for and respond to emergency supply conditions. By this notice, the ERA is proposing a new form ERA-471 and soliciting public comment on all aspects of its design and implementation.

DATES: Written comments by June 26, 1980; requests to speak by 4:30 p.m., June

17, 1980. Hearing Date: 9:30 a.m., June 26, 1980. If necessary, the hearing will continue at 9:30 a.m. the following day.

ADDRESSES: All comments and requests to speak to: Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA–R–80–12, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Hearing Location: Room 2214–14 at GSA Office Bldg., 2639 Federal Bldg., 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

FOR FURTHER INFORMATION CONTACT:

Robert G. Gillette (Comment Procedure), Economic Regulatory Administration, Room 2214B, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3757.

William Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–4055.

C. Eric Hager (Regulations & Emergency Planning), Economic Regulatory Administration, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3263.

Alan Lockard (Office of Petroleum Operations), Economic Regulatory Administration, Room 6222, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3443.

Joel M. Yudson (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252–6744.

SUPPLEMENTAL INFORMATION:

I. *Background.*
II. *Proposed Report Form.*
III. *Written Comment and Public Hearing Procedures.*

I. Background.

Section 211.17 of the Mandatory Petroleum Allocation Regulations set forth at Part 211, 10 C.F.R. provides for a state set-aside program to permit state energy offices to assign allocated product for wholesale purchaser-consumers and end-users experiencing hardship or emergency supply problems. The set-aside volume available for assignment is calculated as a percentage of the total allocable product estimated by a prime supplier to be included within the first sales into a state's distribution system for consumption within the state. Notwithstanding the exemption of middle distillates from the price and allocation regulations, Special Rule No. 10 to Subpart A of Part 211 provides an optional distillate set-aside level of up to four percent of prime supplies for relief of hardship and emergency supply conditions. Section 211.107 of the regulations also provides a five percent set-aside level for motor gasoline for assignment to retail sales outlets experiencing a demonstrated gasoline supply emergency.

The set-aside program supplements the overall supplier purchaser framework imposed by the allocation program and provides a flexible capability to respond to localized hardships and special needs as identified by local officials. During last summer's gasoline shortfall, the ability of state offices to direct product in response to emergency situations was an important factor in minimizing the adverse effects of temporary supply disruptions.

In the preamble to the rule permanently setting the state set-aside level for gasoline at five percent, ERA stated:

> We intend to initiate a reporting requirement under which States would submit monthly reports concerning the amount of the state set-aside for each month, the dates on which specific amounts were released during that month, the political subdivisions that obtained amounts, and end-users or resellers that obtained amounts.
>
> (44 FR 56067, October 4, 1979).

Because of its significance within the overall allocation scheme, we have been collecting informally some information relating to the availability and disposition of set-aside amounts. It is evident, however, that the essential data on the operation of the program should be collected on a more systematic basis. By implementation of a limited data collection procedure as proposed, we believe our ability to monitor the effectiveness of the set-aside program can be substantially improved.

The DOE has broad information gathering authority under Section 13 of the Federal Energy Administration Act of 1974, as amended, to permit monitoring and policy guidance with respect to the programs which it is required to administer. Currently, state offices are not subject to a formal DOE reporting requirement under the program.

The proposed form ERA–471 is intended to solicit only the minimum data necessary as we are concerned that its monthly preparation could impose additional burdens on state officials with respect to the retrieval, compilation and submission of program data. Further, we understand that the requirement will have varying impacts upon state offices depending upon the relative sophistication of the information gathering systems available to each.

For these reasons we are proposing to limit the information reportable to amounts available for assignment, amounts assigned for wholesale purchaser-consumers, end-users and retail outlets, and amounts released by state offices for distribution by prime suppliers. We have determined at this time not to propose requiring submission of information concerning the political or other geographical subdivisions of a state benefiting from assignments under the set-aside, notwithstanding that having such data would improve our ability to monitor the relative availability of set-aside volumes to rural and urban markets within a state. In this connection, we are requesting comments on the merit and practicability of collecting volumetric data by county or other geographic areas within a state. As our experience with the proposed report form evolves, we may determine to adopt such a requirement in the future.

For now, we believe that the proposed form achieves a proper balance between collecting the minimum data needed and avoiding unnecessary burdens on respondents. As a part of the public comment procedure, we are specifically inviting the views of state officials on the administrative and other complications that submission of the proposed form may entail.

II. Proposed Report Form

The proposed form ERA–471 as set forth herein would be required to be received by ERA ten days following the close of each calendar month. The proposed form would solicit information with respect to petroleum products subject to set-aside procedures during a month, irrespective of whether they are currently subject to allocation controls. The form is proposed to include total estimated amounts reported by prime suppliers as available to state offices for assignment; amounts assigned for wholesale purchase-consumers and end-users; amounts of leaded and unleaded gasoline and diesel fuel assigned to retain outlets; and total amounts released for distribution by prime suppliers and amounts released prior to the sixteenth day of a month.

Upon consideration of the comments received in this proceeding and in accordance with applicable procedures, we will in the future submit the proposed form to obtain approval from the United States Office of Management and Budget.

III. Written Comments and Public Hearing Procedures

We have determined that opportunity should be provided to the public including representatives of the state governments to submit written and oral comments on our proposed form.

A. *Written Comments.*

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the matters contained in this notice. Comments should be submitted by 4:30 p.m., local time, on the date and to the address indicated in the "Dates" and "Addresses" sections of this notice. Comments should be identified on the outside envelope and on the document with the docket number and the designation: "State Set-Aside Monthly Report." Ten copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. *Public Hearing.*

1. *Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in the notice, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation at the hearing by 4:30 p.m., local time, on the date set forth in the "Dates" section of this notice. You should also provide a telephone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified on or before June 20, 1980. You will be required to submit one hundred copies of your statement to the hearing location by 9:30 a.m. on the day of the hearing.

2. *Conduct of the Hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. It will not be a judicial-type hearing. Questions may be asked only those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given an opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing by submitting the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA–152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase copies of the transcript of the hearing from the reporters.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, we propose to adopt a new form ERA–471 as set forth below.

Issued in Washington, D.C., May 16, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

BILLING CODE 6450-01-M

U.S. Department of Energy
Economic Regulatory Administration
Washington, D.C. 20461

STATE SET-ASIDE MONTHLY REPORT

This report is mandatory under P.L. 93-159, the Emergency Petroleum Allocation Act of 1973 and P.L. 93-275, the Federal Energy Administration Act of 1974. Late filing, failure to file, failure to keep records, or failure otherwise to comply with these instructions may result in criminal fines, civil penalties, and other sanctions as provided by law. This data will not be treated as confidential.

Part I - Identification Data

1. This report is ☐ Original ☐ Revision, to report dated Month Day Year	2. Date of report Month Day Year	3. This report covers the month of	
4. This report is for the state of	5. Reporting agency's name		
6. Street/Box/RFD	7. City	8. State	9. Zip Code
10. Name of contact person who can answer questions concerning this report	11. Telephone number of contact person		

Part II - Set-Aside Volumes Available, Assigned, and Released During Preceding Month

Petroleum Products	Code	Report Total Volumes in Gallons				
		Available for Set-Aside (convert EIA-25 data to gallons at 42 gallons per barrel) (A)	Assigned for Wholesale Purchaser-Consumers and End-Users (B)	Assigned for Retail Outlets (C)	Released Prior to 16th Day of Month (D)	Total Released for month (E)
Propane	110					
Motor Gasoline (Total)	200					
Unleaded Motor Gasoline	220					
#1 Fuel and Kerosene	310					
#2 Heating Oil	320					
#2 Diesel Fuel	330					
Other Middle Distillates	340					

Part III Certification

I certify that the information shown above and appended hereto (if any) is true and accurate to the best of my knowledge.

12. Name	13. Title	14. Signature	15. Date Signed Month Day Year

[FR Doc. 80-15807 Filed 5-22-80; 8:45 am]
BILLING CODE 6450-01-C

[ERA Case No. 50126-9062-08-82]

Atlantic City Electric Co.; Notice of Intention to Proceed With Prohibition Order Proceedings

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of its intention to proceed with the pending Prohibition Order Proceedings relating to one powerplant, Deepwater Unit #8, owned by Atlantic City Electric Company (ACEC) and located at Pennsgrove, New Jersey.

Pursuant to Sections 301(b) and 701(b) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), 42 U.S.C. 8301 *et seq.*, a proposed prohibition order for Deepwater Unit #8, was issued by ERA on December 21, 1979, and published in the **Federal Register** on January 2, 1980, 45 FR 72.

Description of Prohibition Order Proceedings

In accordance with 10 CFR Part 501, Section 501.51 of the implementing FUA regulations (Regulations) applicable to existing powerplants, the proposed prohibition order commenced an initial public comment period, during which period ACEC was given an opportunity to challenge ERA's initial finding that Deepwater Unit #8 had the technical capability to burn an alternative fuel (coal) as a primary energy source. During this period, the utility was required to furnish ERA with evidence bearing upon the other statutory findings which ERA must make prior to the issuance of a final prohibition order. The utility must also identify any exemptions for which the powerplant may qualify. The recipient of the proposed order need not submit evidence attempting to demonstate entitlement to an exemption.

The publication of this Notice of Intention to Proceed commences a second three-month period during which ACEC may present evidence to demonstrate that the powerplant would qualify for an exemption, which would constitute a defense to the issuance of a final prohibition order.

Subsequent to the end of this second three-month period ERA will, if it intends to issue a final prohibition order, prepare and publish in the **Federal Register** a Notice of Availability of a Tentative Staff Decision concerning the findings ERA must make prior to issuance of a final prohibition order. Those findings, which are required by Section 301(b) of FUA, are: (1) that the powerplant has the technical capability to use coal or another alternative fuel as a primary energy source, or it could have such capability without: (A) substantial physical modification of the powerplant or (B) substantial reduction in the rated capacity of the powerplant; and (2) that it is financially feasible for the powerplant to use coal or another alternate fuel as its primary energy source.

The provisions of Section 701(d) of FUA and Section 501.33 of the Regulations afford any interested person an opportunity to request a public hearing on the proposed prohibition order. Any interested person may request a hearing but must make their request, in writing, no later than 45 days after the Notice of Availability of the Tentative Staff Decision is published in the **Federal Register**. If a hearing is requested, the hearing will be held in accordance with Subpart C of the Regulations. Interested persons may also submit written comments during this 45 days period.

After the hearing and comment period closes, ERA shall determine whether a final prohibition order will be issued, based upon ERA's review of the entire administrative record. Any final prohibition order, together with a summary of the basis therefor, will be published in the **Federal Register**. Such order shall not take effect earlier than sixty days after publication.

Comments and Written Submission Received On Proposed Prohibition Order

During the initial comment period, comments on the proposed prohibition order to Deepwater Unit No. 8 were received only from ACEC which indicated that the company did not presently intend to contest the issuance of a prohibition order to Deepwater Unit. No. 8. Additionally, ACEC indicated that it planned to petition the Environmental Protection Agency for a Delayed Compliance Order in accordance with the provisions of Section 113(d)(5) of the Clean Air Act.

During this period, neither Atlantic City Electric Company nor any other interested person submitted any information contrary to ERA's initial finding that Deepwater Unit No. 8 had the technical capability to burn an alternate fuel (coal) as a primary energy source.

In accordance with Section 501.51 of the Regulations, ACEC identified those exemptions for which Deepwater Unit No. 8 may qualify. The temporary exemptions authorized by Section 311 of the Act which Deepwater Unit No. 8 identified are:

(1) Inability to comply with applicable Environmental Requirements.

(2) Public Interest.

(3) Retirement.

(4) Powerplant Necessary to Maintain Reliability of Service.

(5) Peakload.

In addition, Atlantic City Electric Company identified the following permanent exemptions for which Deepwater Unit No. 8 may qualify as authorized by Section 312 of the Act:

(1) Lack of Alternate Fuel Supply.

(2) Site Limitations.

(3) Inability to comply with applicable Environmental Requirements.

(4) State and Local Requirements.

(5) Mixtures containing Natural Gas or Petroleum.

(6) Peakload Powerplant.

(7) Intermediate Load Powerplant.

For further information contact: William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 653-4055.

R. James Caverly, Existing MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 2304, Washington, D.C. 20461, (202) 653-3805.

Jim Renjilian, Office of General Counsel, Department of Energy, Forrestal Building, Room 6G-087, Washington, D.C. 20585, (202) 252-2967.

Issued in Washington, D.C. on May 16, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-15805 Filed 5-22-80; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on Consent orders.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firms listed below during the month of April. The consent Orders represent resolutions of outstanding compliance investigations or proceedings by the DOE and the firms which involve a sum of less than $500,000 in the aggregate, exclusing penalties and interest. For Consent Orders involving sums of $500,000 or more, Notice will be separately published in the **Federal Register**. These Consent Orders are concerned exclusively with payment of the

refunded amounts to injured parties for alleged overcharges made by the specified companies during the time periods indicated below through direct refunds or rollbacks of prices.

For further information regarding these Consent Orders, please contact Ken Merica, District Manager of Enforcement, 1075 So. Yukon, Lakewood, Colorado 80226, telephone number 303/234-3195.

Firm name and address	Refund amount	Product	Period covered	Recipients of refund
Utah Petroleum Co., Sandy, Utah 84070	$18,216.90	Gasoline	Mar. 1, 1979 thru July 31, 1979.	Numerous wholesale and retail customers.

Issued in Lakewood, Colo., on the 29th day of April 1980.

Kirkley O. Madsen,

Acting District Manager of Enforcement

[FR Doc. 80-15804 Filed 5-22-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[No. 191]

Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued May 19, 1980.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Louisiana Office of Conservation

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or Block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-27436/80-790
2. 17-111-21072-0000
3. 108 000 000
4. IMC Exploration Co
5. Olin Mathieson Chemical Corp #28
6. Monroe Gas Field
7. Union LA
8. .9 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27437/80-1004
2. 17-073-20314-0000
3. 108 000 000
4. IMC Exploration Co
5. Central Immigration #F-225
6. Monroe Gas Field
7. Ouachita LA
8. 1.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27438/80-1003
2. 17-111-20274-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-204
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27439/80-746
2. 17-045-20502-0000
3. 107 000 000
4. Dyco Petroleum Corp
5. Petit Anse #2
6. Avery Island
7. Iberia LA
8. 200.0 million cubic feet
9. April 16, 1980
10. Louisiana Intrastate Gas Corp

1. 80-27440/80-745
2. 17-045-20555-0000
3. 107 000 000
4. Dyco Petroleum Corp
5. Petit Anse #5
6. Avery Island
7. Iberia LA
8. 350.0 million cubic feet
9. April 16, 1980
10. Louisiana Intrastate Gas Corp

1. 80-27441/80-744
2. 17-045-20597-0000-
3. 107 000 000
4. Dyco Petroleum Corp
5. Petit Anse #6
6. Avery Island
7. Iberia LA
8. 400.0 million cubic feet
9. April 16, 1980
10.

1. 80-27442/80-743
2. 17-073-00545-0000-
3. 108 000 000
4. Sho-Van Gas Producing Co Inc
5. West Virginia #5
6. Monroe Gas Field
7. Ouachita LA
8. 1.4 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80-27443/80-960
2. 17-073-20286-0000-
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-158
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27444/80-959
2. 17-111-20265-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-214
6. Monroe Gas Field
7. Union LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27445/80-958
2. 17-111-20262-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-212
6. Monroe Gas Field
7. Union LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27446/80-957
2. 17-111-20228-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-211
6. Monroe Gas Field
7. Union LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27447/80-954
2. 17-111-20263-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-206
6. Monroe Gas Field
7. Union LA
8. 7.7 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27448/80-955
2. 17-111-20264-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-207
6. Monroe Gas Field
7. Union LA
8. 7.7 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27449/80-956
2. 17-111-20227-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-210
6. Monroe Gas Field
7. Union LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27450/80-953
2. 17-073-20347-0000-
3. 108 000 000
4. IMC Exploration Co
5. Phillips #N-215

6. Monroe Gas Field
7. Ouachita LA
8. 2.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27451/80-952
2. 17-111-20282-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-219
6. Monroe Gas Field
7. Union LA
8. 7.8 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27452/80-951
2. 17-111-20283-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-220
6. Monroe Gas Field
7. Union LA
8. 7.8 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27453/80-950
2. 17-111-20202-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-221
6. Monroe Gas Field
7. Union LA
8. 7.8 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27454/80-949
2. 17-073-20293-0000-
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Est #F-148
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27455/80-948
2. 17-073-20295-0000-
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Est #F-150
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27456/80-947
2. 17-111-20248-0000-
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N-188
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27457/80-1022
2. 17-073-20380-0000-
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-232
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27458/80-1021
2. 17-073-20381-0000-
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-233
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27459/80-1040
2. 17-073-20313-0000-
3. 108 000 000
4. IMC Exploration Co
5. Central Immigration #F-224
6. Monroe Gas Field
7. Ouachita LA
8. 1.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27460/80-1039
2. 17-073-20323-0000-
3. 108 000 000
4. IMC Exploration Co
5. Ladel #F-248
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27461/80-1038
2. 17-073-20308-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-211
6. Monroe Gas Field
7. Ouachita LA
8. 4.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27462/80-1037
2. 17-073-20369-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-212
6. Monroe Gas Field
7. Ouachita LA
8. 4.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27463/80-1036
2. 17-073-20304-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-213
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27464/80-1035
2. 17-073-20305-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation Co #F-214
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27465/80-1034
2. 17-073-20309-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-215
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27466/80-1033
2. 17-073-20357-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-216
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27467/80-1031
2. 17-073-20328-0000
3. 108 000 000
4. IMC Exploration Co
5. Central Immigration #F-175
6. Monroe Gas Field
7. Ouachita LA
8. 1.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27468/80-1032
2. 17-073-20329-0000
3. 108 000 000
4. IMC Exploration Co
5. Central Immigration #F-176
6. Monroe Gas Field
7. Ouachita LA
8. 1.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27469/80-1030
2. 17-073-20327-0000
3. 108 000 000
4. IMC Exploration
5. Central Immigration #F-174
6. Monroe Gas Field
7. Ouachita LA
8. 1.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27470/80-1029
2. 17-073-20298-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Est F-167
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27471/80-1028
2. 17-073-20297-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Est F-166
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27472/80-1041
2. 17-073-20312-0000
3. 108 000 000
4. IMC Exploration Co
5. Central Immigration #F-223
6. Monroe Gas Field
7. Ouachita LA
8. 1.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27473/80–791
2. 17–111–21016–0000
3. 108 000 000
4. IMC Exploration Co
5. Olin Mathieson Chemical Corp #26
6. Monroe Gas Field
7. Union LA
8. .6 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27474/80–712
2. 17–067–21212–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 8 Ser #160536
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27475/80–711
2. 17–067–21211–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 7 Ser #160535
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27476/80–710
2. 17–067–21210–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 6 Ser #160534
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27477/80–709
2. 17–067–21155–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 5 Ser #159535
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27478/80–708
2. 17–067–21154–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 4 Ser #159534
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27479/80–707
2. 17–067–21153–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 3 Ser #159533
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27480/80–706
2. 17–067–21152–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 2 Ser #159532
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27481/80–705
2. 17–067–21151–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 1 Ser #159531
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27482/80–704
2. 17–067–21368–0000
3. 103 000 000
4. Primos Production Co
5. Georgia Pacific D #7
6. Monroe Field
7. Morehouse LA
8. 20.5 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80–27483/80–703
2. 17–067–21369–0000
3. 103 000 000
4. Primos Production Co
5. Georgia Pacific D #3
6. Monroe Field
7. Morehouse LA
8. 25.7 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80–27484/80–702
2. 17–067–21366–0000
3. 103 000 000
4. Primos Production Co
5. Georgia Pacific D #2
6. Monroe Field
7. Morehouse LA
8. 26.7 million cubic feet
9. April 16, 1980
10. United Gas Pipeline

1. 80–27485/80–701
2. 17–067–21365–0000
3. 103 000 000
4. Primos Production Co
5. Georgia Pacific D #1
6. Monroe Field
7. Morehouse LA
8. 30.8 million cubic feet
9. April 16, 1980
10. United Gas Pipeline

1. 80–27486/80–700
2. 17–067–21346–0000
3. 103 000 000
4. Primos Production Co
5. Georgia Pacific C #5
6. Monroe Field
7. Morehouse LA
8. 10.3 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80–27487/80–724
2. 17–073–21102–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 20 Ser #160679
6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27488/80–723
2. 17–073–21101–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 19 Ser #160678
6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27489/80–722
2. 17–073–21100–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 18 Ser #160677
6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27490/80–721
2. 17–067–21218–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 17 Ser #160676
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27491/80–720
2. 17–073–21099–0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 16 Ser #160669
6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80–27492/80–906
2. 17–111–20323–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #1
6. Monroe
7. Union LA
8. 5.9 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27493/80–905
2. 17–111–20315–0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft #3
6. Monroe Gas Field
7. Union LA
8. 10.0 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27494/80–904
2. 17–111–20387–0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft A #12
6. Monroe Gas Field
7. Union LA
8. 7.2 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27495/80–903
2. 17–111–20331–0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft A #4

6. Monroe Gas Field
7. Union LA
8. 7.3 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80-27496/80-799
2. 17-111-21194-0000
3. 103 000 000
4. Ergon Inc
5. Cora C Smith No 2
6. Monroe (6824)
7. Union (056) LA
8. 5.6 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27497/80-798
2. 17-111-21324-0000
3. 103 000 000
4. Ergon Inc
5. S L Reeves No 1
6. Monroe (6824)
7. Union (056) LA
8. 19.4 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27498/80-797
2. 17-111-21214-0000
3. 103 000 000
4. Ergon Inc
5. Iris Russell No 1
6. Monroe (6824)
7. Union LA
8. 5.3 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27499/80-805
2. 17-111-21218-0000
3. 103 000 000
4. Ergon Inc
5. D Miller No 1
6. Monroe (6824)
7. Union LA
8. 4.8 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27500/80-804
2. 17-111-21234-0000
3. 103 000 000
4. Ergon Inc
5. Milas Medlin No 2
6. Monroe (6824)
7. Union LA
8. 9.4 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27501/80-803
2. 17-111-21378-0000
3. 103 000 000
4. Ergon Inc
5. Post No 1
6. Monroe (6824)
7. Union LA
8. 4.8 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27502/80-802
2. 17-111-21326-0000
3. 103 000 000
4. Ergon Inc
5. Jarmon Estate No 1
6. Monroe (6824)
7. Union LA
8. 20.3 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27503/80-801
2. 17-111-21169-0000
3. 108 000 000
4. Ergon Inc
5. Stowe No 1
6. Monroe (6824)
7. Union LA
8. 2.6 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27504/80-719
2. 17-073-21096-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 15 Ser #160666
6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27505/80-718
2. 17-073-21097-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 14 Ser #160667
6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27506/80-717
2. 17-073-21098-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 13 Ser #160668
6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27507/80-716
2. 17-067-21215-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 12 Ser #160584
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27508/80-1088
2. 17-067-21310-0000
3. 103 000 000
4. Nip N Tuck Minerals Inc
5. Pipes #4
6. Monroe Gas Field
7. Morehouse LA
8. 28.0 million cubic feet
9. April 16, 1980
10. Louisiana Gas Service Co

1. 80-27509/80-1087
2. 17-073-20943-0000
3. 108 000 000
4. Primos Production Co
5. Cole Heirs Corp #29
6. Monroe Gas Field
7. Ouachita LA
8. 17.8 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27510/80-1086
2. 17-073-20942-0000
3. 108 000 000
4. Primos Production Co
5. Cole Heirs Corp #28
6. Monroe Gas Field
7. Ouachita LA
8. 17.8 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27511/80-1085
2. 17-073-20995-0000
3. 108 000 000
4. Primos Production Co
5. Cole Heirs Corp #11
6. Monroe Gas Field
7. Ouachita LA
8. 17.9 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27512/80-1084
2. 17-073-20997-0000
3. 108 000 000
4. Primos Production Co
5. Cole Heirs Corp #10
6. Monroe Gas Field
7. Ouchita LA
8. 17.9 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27513/80-1083
2. 17-073-20996-0000
3. 108 000 000
4. Primos Production Co
5. Cole Heirs Corp #19
6. Monroe Gas Field
7. Ouachita LA
8. 17.9 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27514/80-1053
2. 17-111-20278-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-201
6. Monroe Gas Field
7. Union LA
8. 10.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27515/80-1052
2. 17-111-20280-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-202
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27516/80-1001
2. 17-111-20181-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-216
6. Monroe Gas Field
7. Union LA
8. 9.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27517/80-1000
2. 17-111-20203-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-218
6. Monroe Gas Field
7. Union LA
8. 10.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27518/80–999
2. 17–111–20230–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N–222
6. Monroe Gas Field
7. Union LA
8. 15.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27519/80–998
2. 17–111–20231–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N–223
6. Monroe Gas Field
7. Union LA
8. 15.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27520/80–997
2. 17–111–20208–0000
3. 108 000 000
4. IMC Exploration Co
5. Union Producing #N–225
6. Monroe Gas Field
7. Union LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27521/80–694
2. 17–111–21406–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #25
6. Monroe Gas Field
7. Union LA
8. 20.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27522/80–670
2. 17–073–21179–0000
3. 103 000 000
4. Lock Arbor Production Co
5. Smith et al #12
6. Monroe
7. Ouachita LA
8. 10.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27523/80–688
2. 17–111–21401–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #19
6. Monroe Gas Field
7. Union LA
8. 20.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27524/80–687
2. 17–111–21400–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #18
6. Monroe Gas Field
7. Union LA
8. 21.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27525/80–686
2. 17–111–21376–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #17
6. Monroe Gas Field
7. Union LA
8. 19.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27526/80–685
2. 17–111–21375–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #16
6. Monroe Gas Field
7. Union LA
8. 17.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27527/80–672
2. 17–073–21182–0000
3. 103 000 000
4. Lock Arbor Production Co
5. Smith et al #14
6. Monroe Gas
7. Ouachita LA
8. 13.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27528/80–749
2. 17–057–21479–0000
3. 103 000 000
4. Texaco Inc
5. Mid A–17 RG SUA BDC UB 122
6. Bay De Chene
7. Lafourche LA
8. 15.0 million cubic feet
9. April 16, 1980
10. Kaiser Aluminum & Chemical Corp, American Cyanamid Co, Argus Chemical Corp, Beker Industries Corp

1. 80–27529/80–748
2. 17–051–20450–0000
3. 103 000 000
4. Texaco Inc
5. BDC LWE B–25 RH–1 SU BDC UA 118
6. Bay De Chene
7. Jefferson LA
8. 55.0 million cubic feet
9. April 16, 1980
10. Kaiser Aluminum & Chemical Corp, American Cyanamid Co, Argus Chemical Corp, Beker Industries Corp

1. 80–27530/80–984
2. 17–073–20300–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate F–152
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27531/80–983
2. 17–073–20296–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F–151
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27532/80–982
2. 17–067–20383–0000
3. 108 000 000
4. IMC Exploration Co
5. Texas Delta #F–188
6. Monroe Gas Field
7. Morehouse LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27533/80–987
2. 17–073–20303–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F–155
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27534/80–986
2. 17–073–20302–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F–154
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27535/80–985
2. 17–073–20301–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F–153
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27536/80–752
2. 17–067–20384–0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Earven White #1 Serial #140054
6. Monroe
7. Morehouse Parish LA
8. 1.0 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80–27537/80–1002
2. 17–111–20275–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N–205
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27538/80–788
2. 17–111–21011–0000
3. 108 000 000
4. Investment Trends Corp
5. Navarro #1
6. Monroe
7. Union LA
8. 1.0 million cubic feet
9. April 16, 1980
10. International Minerals Corp

1. 80–27539/80–787
2. 17–111–21020–0000
3. 108 000 000
4. IMC Exploration Co
5. Frost Lumber Ind #10
6. Monroe Gas Field
7. Union LA
8. .8 million cubic feet
9. April 16, 1980
10. Mid Louisiana Co

1. 80–27540/80–786

2. 17-111-21071-0000
3. 108 000 000
4. Investment Trends Corp
5. Navarro #6
6. Monroe
7. Union LA
8. .9 million cubic feet
9. April 16, 1980
10. International Minerals Corp

1. 80-27541/80-785
2. 17-111-21077-0000
3. 108 000 000
4. IMC Exploration Co
5. Frost Lumber Ind #13
6. Monroe Gas Field
7. Union LA
8. .7 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27542/80-784
2. 17-111-21151-0000
3. 108 000 000
4. IMC Exploration Co
5. Olin Mathieson Chem Corp #29
6. Monroe Gas Field
7. Union LA
8. .8 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27543/80-783
2. 17-111-21152-0000
3. 108 000 000
4. IMC Exploration Co
5. Olin Mathieson Chem Corp #30
6. Monroe Gas Field
7. Union LA
8. .8 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27544/80-782
2. 17-111-21153-0000
3. 108 000 000
4. Investment Trends Corp
5. Navarro #11
6. Monroe
7. Union LA
8. .3 million cubic feet
9. April 16, 1980
10. International Minerals Corp

1. 80-27545/80-781
2. 17-111-21148-0000
3. 108 000 000
4. Investment Trends Corp
5. Navarro #12
6. Monroe
7. Union LA
8. .9 million cubic feet
9. April 16, 1980
10. International Minerals Corp

1. 80-27546/80-780
2. 17-111-21076-0000
3. 108 000 000
4. IMC Exploration Company
5. Olin Gas Trans Corp #70
6. Monroe Gas Field
7. Union LA
8. .5 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27547/80-750
2. 17-721-20307-0000
3. 103 000 000
4. Shell Oil Co
5. SL 2590 No 4
6. South Pass Block 6
7. Plaquemines LA
8. 400.0 million cubic feet
9. April 16, 1980
10. Tennessee Gas Pipeline Co. Air Products & Chemical Inc

1. 80-27548/80-666
2. 17-111-20657-0000
3. 108 000 000
4. Central Transmission Inc C/O Energy
5. Sturgis-Nix #1
6. Monroe Gas
7. Union LA
8. 2.6 million cubic feet
9. April 16, 1980
10. IMC Exploration Co

1. 80-27549/80-665
2. 17-111-20672-0000
3. 108 000 000
4. Central Transmission Inc C/O Energy
5. Read #3
6. Monroe Gas
7. Union LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Exploration Co

1. 80-27550/80-664
2. 17-111-20626-0000
3. 108 000 000
4. Central Transmission Inc C/O Energy
5. Spencer #1
6. Monroe Gas
7. Union LA
8. 11.7 million cubic feet
9. April 16, 1980
10. IMC Exploration Co

1. 80-27551/80-663
2. 17-111-00314-0000
3. 108 000 000
4. D J Simmons & Co of Louisiana
5. Union #61
6. Monroe Gas
7. Union LA
8. 1.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80-27552/80-684
2. 17-111-21373-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #14
6. Monroe Gas Field
7. Union LA
8. 17.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27553/80-683
2. 17-111-21372-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #13
6. Monroe Gas Field
7. Union LA
8. 19.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27554/80-682
2. 17-111-21371-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #12
6. Monroe Gas Field
7. Union LA
8. 15.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27555/80-681
2. 17-111-21370-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #11
6. Monroe Gas Field
7. Union LA
8. 20.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27556/80-680
2. 17-111-21369-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #10
6. Monroe Gas Field
7. Union LA
8. 18.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27557/80-679
2. 17-111-21367-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #8
6. Monroe Gas Field
7. Union LA
8. 16.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27558/80-678
2. 17-111-21312-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #7
6. Monroe Gas Field
7. Union LA
8. 18.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27559/80-677
2. 17-111-21311-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #6
6. Monroe Gas Field
7. Union LA
8. 17.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27560/80-676
2. 17-111-21262-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #5
6. Monroe Gas Field
7. Union LA
8. 18.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27561/80-696
2. 17-111-21359-0000
3. 103 000 000
4. Ergon Inc
5. John Green No 1
6. Monroe (6824)
7. Union LA
8. 14.3 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27562/80-695
2. 17-111-21429-0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #27

6. Monroe Gas Field
7. Union LA
8. 19.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27563/80–911
2. 17–111–20348–0000
3. 108 000 000
4. Luffey Gas Corp
5. La Gas Lands #1
6. Monroe Gas Field
7. Union LA
8. 4.4 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27564/80–910
2. 17–111–20377–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #10
6. Monroe Gas Field
7. Union LA
8. 5.7 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27565/80–909
2. 17–111–20334–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #4
6. Monroe Gas Field
7. Union LA
8. 5.7 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27566/80–675
2. 17–111–21261–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #4
6. Monroe Gas Field
7. Union LA
8. 16.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27567/80–674
2. 17–111–21258–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #2
6. Monroe Gas Field
7. Union LA
8. 17.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27568/80–908
2. 17–111–20325–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #3
6. Monroe Gas Field
7. Union LA
8. 5.9 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27569/80–907
2. 17–111–20324–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #2
6. Monroe Gas Field
7. Union LA
8. 5.9 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27570/80–693
2. 17–111–21405–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #24
6. Monroe Gas Field
7. Union LA
8. 19.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27571/80–692
2. 17–111–21404–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #23
6. Monroe Gas Field
7. Union LA
8. 21.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27572/80–691
2. 17–111–21403–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #22
6. Monroe Gas Field
7. Union LA
8. 19.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27573/80–690
2. 17–111–21427–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #21
6. Monroe Gas Field
7. Union LA
8. 16.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27574/80–689
2. 17–111–21402–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #20
6. Monroe Gas Field
7. Union LA
8. 17.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27575/80–941
2. 17–111–20201–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling LBR Co #N–182
6. Monroe Gas Field
7. Union LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27576/80–940
2. 17–111–20247–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling LBR Co #N–183
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27577/80–939
2. 17–111–20243–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling LBR Co #N–184
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27578/80–938
2. 17–111–20244–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling LBR Co #N–185
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27579/80–937
2. 17–111–20246–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling LBR Co #N–186
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27580/80–1082
2. 17–073–20990–0000
3. 108 000 000
4. Primos Production Co
5. Cole Heirs Corp #8
6. Monroe Gas Field
7. Ouachita LA
8. 17.9 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80–27581/80–1081
2. 17–073–20976–0000
3. 108 000 000
4. Primos Production Co
5. Cole Heirs #7
6. Monroe Gas Field
7. Ouachita LA
8. 17.9 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line

1. 80–27582/80–673
2. 17–111–21257–0000
3. 103 000 000
4. Reliance Trusts
5. Olinkraft #1
6. Monroe Gas Field
7. Union LA
8. 16.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27583/80–669
2. 17–073–21178–0000
3. 103 000 000
4. Lock Arbor Production Co
5. Smith et al #11
6. Monroe
7. Ouachita LA
8. 10.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27584/80–668
2. 17–073–21146–0000
3. 103 000 000
4. Lock Arbor Production Co
5. Smith et al #9
6. Monroe
7. Ouachita LA
8. 10.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27585/80–667
2. 17–073–21144–0000
3. 103 000 000
4. Lock Arbor Production Co
5. Smith et al #7
6. Monroe Gas
7. Ouachita LA
8. 10.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27586/80–671
2. 17–073–21180–0000
3. 103 000 000
4. Lock Arbor Production Co
5. Smith et al #13
6. Monroe
7. Ouachita LA
8. 10.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27587/80–901
2. 17–111–20482–0000
3. 108 000 000
4. Luffey Gas Corp
5. Montery #17
6. Monroe Gas Field
7. Union LA
8. 10.8 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27588/80–900
2. 17–111–20483–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #19
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–275589/80–899
2. 17–111–20381–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #15
6. Monroe Gas Field
7. Union LA
8. 2.2 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27590/80–898
2. 17–111–20481–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #16
6. Monroe Gas Field
7. Union LA
8. 10.8 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27591/80–897
2. 17–111–20337–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #7
6. Monroe Gas Field
7. Union LA
8. 4.7 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27592/80–896
2. 17–111–20367–0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #9
6. Monroe Gas Field
7. Union LA
8. 3.5 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27593/80–916
2. 17–111–20349–0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft A #7
6. Monroe Gas Field
7. Union LA
8. 2.8 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27594/80–915
2. 17–111–20376–0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft A #11
6. Monroe Gas Field
7. Union LA
8. 7.3 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27595/80–914
2. 17–111–20314–0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft #2
6. Monroe Gas Field
7. Union LA
8. 5.7 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27596/80–913
2. 17–111–20359–0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft A No 9
6. Monroe Gas Field
7. Union LA
8. 7.3 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27597/80–912
2. 17–111–20343–0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft A #5
6. Monroe Gas Field
7. Union LA
8. 3.5 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80–27598/80–1089
2. 17–111–21806–0000
3. 103 000 000
4. Ergon Inc
5. T L Kennedy No 2
6. Monroe (6824)
7. Union LA
8. 15.5 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27599/80–1062
2. 17–111–20276–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N–199
6. Monroe Gas Field
7. Union LA
8. 10.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27600/80–1061
2. 17–111–20277–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N–200
6. Monroe Gas Field
7. Union LA
8. 10.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27601/80–995
2. 17–073–20287–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F–159
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27602/80–994
2. 17–073–20367–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F–170
6. Monroe Gas Field
7. Ouachita LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27603/80–993
2. 17–073–20370–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate F–171
6. Monroe Gas Field
7. Ouachita LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27604/80–1046
2. 17–073–20368–0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F–217
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27605/80–1095
2. 17–726–20175–0000
3. 102 000 000
4. Kerr-McGee Corp
5. S L 4574 Well No 7
6. Breton Sound Block 20
7. Plaquemines LA
8. 33.0 million cubic feet
9. April 16, 1980
10. Southern Natural Gas Co

1. 80–27606/80–1094
2. 17–073–21089–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. Vgn Ra Sul Emma Cade Price
6. South Drew
7. Ouachita LA
8. .0 million cubic feet
9. April 16, 1980
10. Olinkraft Inc

1. 80–27607/80–1093
2. 17–049–20119–0000
3. 103 000 000
4. Wessely Energy Corp
5. Ferguson Cv C Sur No 1 164436

6. Vernon
7. Jackson LA
8. 175.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27608/80–1091
2. 17–073–21184–0000
3. 103 000 000
4. Lock Arbor Production Co
5. Smith et al #16
6. Monroe
7. Ouachita LA
8. 10.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27609/80–1090
2. 17–111–21807–0000
3. 103 000 000
4. Ergon Inc
5. Oliver Civic Center No 1
6. Monroe (6824)
7. Union (056) LA
8. 17.3 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27610/80–699
2. 17–067–21345–0000
3. 103 000 000
4. Primos Production Co
5. Georgia Pacific C #4
6. Monroe Field
7. Morehouse LA
8. 20.5 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line

1. 80–27611/80–698
2. 17–111–21441–0000
3. 103 000 000
4. Ergon Inc
5. E L Medlin No 1
6. Monroe (6824)
7. Union LA
8. 15.5 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27612/80–697
2. 17–111–21318–0000
3. 103 000 000
4. Ergon Inc
5. Mary Phillips No 3
6. Monroe
7. Union LA
8. 18.0 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80–27613/80–936
2. 17–111–20245–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–187
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27614/80–935
2. 17–111–20188–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–181
6. Monroe Gas Field
7. Union LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27615/80–934
2. 17–111–20187–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–180
6. Monroe Gas Field
7. Union LA
8. 3.9 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27616/80–933
2. 17–111–20186–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–179
6. Monroe Gas Field
7. Union LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27617/80–932
2. 17–111–20185–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–178
6. Monroe Gas Field
7. Union LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27618/80–931
2. 17–111–20180–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–177
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27619/80–930
2. 17–111–20179–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–176
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27620/80–929
2. 17–111–20178–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–175
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27621/80–928
2. 17–111–20175–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–174
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27622/80–927
2. 17–111–20176–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–173
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27623/80–926
2. 17–111–20174–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N–172
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27624/80–1050
2. 17–073–20359–0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F–226
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27625/80–1049
2. 17–073–20360–0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F–227
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27626/80–1048
2. 17–111–20242–0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N–224
6. Monroe Gas Field
7. Union LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27627/80–1047
2. 17–073–20383–0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F–228
6. Monroe Gas Field
7. Ouachita LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27628/80–1070
2. 17–067–20389–0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F–192
6. Monroe Gas Field
7. Morehouse LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27629/80–1069
2. 17–067–20391–0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F–193
6. Monroe Gas Field
7. Morehouse LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27630/80-1068
2. 17-067-20382-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-187
6. Monroe Gas Field
7. Morehouse LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27631/80-1067
2. 17-111-20268-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-192
6. Monroe Gas Field
7. Union LA
8. 8.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27632/80-1066
2. 17-111-20269-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-193
6. Monroe Gas Field
7. Union LA
8. 8.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27633/80-1065
2. 17-111-20270-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-194
6. Monroe Gas Field
7. Union LA
8. 8.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27634/80-1064
2. 17-111-20272-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-197
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27635/80-1063
2. 17-111-20273-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-198
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27636/80-800
2. 17-111-21282-0000
3. 103 000 000
4. Ergon Inc
5. Eugenia Thomas No 1
6. Monroe (6824)
7. Union LA
8. 8.3 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27637/80-1092
2. 17-109-21368-0000
3. 107 000 000
4. Tenneco Oil Co
5. Dennis Cenac No 12
6. Lake Barre
7. Terrebonne Parish LA
8. 1.0 million cubic feet
9. April 16, 1980
10.

1. 80-27638/80-1059
2. 17-073-20331-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate F-169
6. Monroe Gas Field
7. Ouachita LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27639/80-1058
2. 17-111-20266-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-213
6. Monroe Gas Field
7. Union LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27640/80-1057
2. 17-067-20404-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-198
6. Monroe Gas Field
7. Morehouse LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27641/80-1056
2. 17-067-20392-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-194
6. Monroe Gas Field
7. Morehouse LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27642/80-1055
2. 17-073-20277-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-144
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27643/80-1054
2. 17-073-20281-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-145
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27644/80-1077
2. 17-067-20372-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-182
6. Monroe Gas Field
7. Morehouse LA
8. 2.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27645/80-1076
2. 17-067-20373-0000
3. 108 000 000
4. IMC Exploration Company
5. Tensas Delta #F-183
6. Monroe Gas Field
7. Morehouse LA
8. 2.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27646/80-902
2. 17-111-20332-0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkroft A #2
6. Monroe Gas Field
7. Union LA
8. 7.2 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80-27647/80-1051
2. 17-111-20281-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-203
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27648/80-737
2. 17-073-00044-0000
3. 108 000 000
4. Estate Mrs Clara B Guthrie
5. Guthrie #7
6. Monroe
7. Ouachita LA
8. 3.6 million cubic feet
9. April 16, 1980
10. Ashland Exploration Inc

1. 80-27649/80-736
2. 17-073-00000-0000
3. 108 000 000
4. Estate of Mrs Clara B Guthrie
5. Guthrie #5
6. Monroe
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. Ashland Exploration Inc

1. 80-27650/80-735
2. 17-073-00042-0000
3. 108 000 000
4. J G Guthrie
5. Guthrie #4
6. Monroe
7. Ouachita LA
8. 2.6 million cubic feet
9. April 16, 1980
10. Ashland Exploration Inc

1. 80-27651/80-734
2. 17-073-00000-0000
3. 108 000 000
4. J G Guthrie
5. Guthrie #3
6. Monroe Gas
7. Ouachita LA
8. 3.2 million cubic feet
9. April 16, 1980
10. Ashland Exploration Inc

1. 80-27652/80-726
2. 17-073-21104-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 22 Ser #160681

6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27653/80-778
2. 17-111-21273-0000
3. 108 000 000
4. Investment Trends Corp
5. Olincraft #1
6. Monroe
7. Union LA
8. .7 million cubic feet
9. April 16, 1980
10. International Minerals Corp

1. 80-27654/80-777
2. 17-111-21274-0000
3. 108 000 000
4. Investment Trends Corp
5. Olinkraft #2
6. Monroe
7. Union LA
8. .3 million cubic feet
9. April 16, 1980
10. International Minerals Corp

1. 80-27655/80-776
2. 17-111-21224-0000
3. 108 000 000
4. Investment Trends Corp
5. Dodd #1
6. Monroe
7. Union LA
8. 1.0 million cubic feet
9. April 16, 1980
10. Darbonne Gas Gathering

1. 80-27656/80-775
2. 17-111-21134-0000
3. 108 000 000
4. Investment Trends Corp
5. T & R Smith #2
6. Monroe
7. Union LA
8. .4 million cubic feet
9. April 16, 1980
10. Darbonne Gas Gathering

1. 80-27657/80-774
2. 17-111-21133-0000
3. 108 000 000
4. Investment Trends Corp
5. T & R Smith #1
6. Monroe
7. Union LA
8. .6 million cubic feet
9. April 16, 1980
10. Darbonne Gas Gathering

1. 80-27658/80-773
2. 17-073-20936-0000
3. 108 000 000
4. Investment Trends Corp
5. Crescent #1
6. Monroe
7. Ouachita LA
8. .2 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27659/80-789
2. 17-111-21075-0000
3. 108 000 000
4. IMC Exploration Co
5. Olin Gas Trans Corp #69
6. Monroe Gas Field
7. Union LA
8. .6 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27660/80-1075
2. 17-067-20374-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-184
6. Monroe Gas Field
7. Morehouse LA
8. 2.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27661/80-1074
2. 17-067-20381-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-185
6. Monroe Gas Field
7. Morehouse LA
8. 2.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27662/80-1073
2. 17-067-20398-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-186
6. Monroe Gas Field
7. Morehouse LA
8. 2.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27663/80-1072
2. 17-067-20388-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-196
6. Monroe Gas Field
7. Morehouse LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27664/80-1071
2. 17-067-20387-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-195
6. Monroe Gas Field
7. Morehouse LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27665/80-715
2. 17-067-21217-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs #11 Ser #160597
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27666/80-714
2. 17-067-21214-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 10 Ser #160538
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27667/80-713
2. 17-067-21213-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 9 Ser #160537
6. Monroe
7. Morehouse LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27668/80-1060
2. 17-073-20330-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate F-168
6. Monroe Gas Field
7. Ouachita LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27669/80-841
2. 17-073-20244-0000
3. 108 000 000
4. James A Noe
5. Breard M No 1
6. Monroe Gas
7. Ouachita LA
8. 8.0 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27670/80-840
2. 17-111-20149-0000
3. 108 000 000
4. James A Noe
5. Talton No A-1
6. Monroe Gas
7. Ouachita LA
8. 6.0 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27671/80-1027
2. 17-073-20363-0000
3. 108 000 000
4. IMC Exploration Co
5. Central Immigration #F-236
6. Monroe Gas Field
7. Ouachita LA
8. 2.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27672/80-1026
2. 17-073-20366-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-234
6. Monroe Gas Field
7. Ouachita LA
8. 2.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27673/80-10-25
2. 17-073-20377-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-235
6. Monroe Gas Field
7. Ouachita LA
8. 2.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27674/80-1024
2. 17-073-20378-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-230
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27675/80-1023
2. 17-073-20379-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-231
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27676/80-847
2. 17-073-21183-0000
3. 103 000 000
4. Lock Arbor Production Co
5. HSU 253 Smith Et Al #15
6. Monroe Gas
7. Ouachita LA
8. 8.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80-27677/80-924
2. 17-111-20172-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling LBR Co #N-170
6. Monroe Gas Field
7. Union LA
8. 8.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27678/80-923
2. 17-111-20171-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling LBR Co #N-169
6. Monroe Gas Field
7. Union LA
8. 8.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27679/80-922
2. 17-111-20366-0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #8
6. Monroe Gas Field
7. Union LA
8. 2.0 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80-27680/80-921
2. 17-111-20335-0000
3. 108 000 000
4. Luffey Gas Corp
5. Monterey #5
6. Monroe Gas Field
7. Union LA
8. 11.1 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80-27681/80-988
2. 17-073-20278-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-156
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27682/80-796
2. 17-111-21323-0000
3. 103 000 000
4. Ergon Inc
5. J O Wisecarver No 1
6. Monroe (6824)
7. Union (056) LA
8. 12.4 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27683/80-996
2. 17-073-20294-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-149
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27684/80-740
2. 17-107-00538-0000
3. 108 000 000
4. Richard B. Nelson
5. J T Curry No 1 099328
6. Locust Ridge
7. Tensas LA
8. 19.8 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27685/80-739
2. 17-111-20640-0000
3. 108 000 000
4. O O Cummings
5. Sturgis Nix #1
6. Monroe Gas Field
7. Union LA
8. 8.6 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27686/80-738
2. 17-111-21208-0000
3. 108 000 000
4. O O Cummings
5. Sturgis Nix #2
6. Monroe Gas Field
7. Union LA
8. 12.0 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27687/80-765
2. 17-067-20370-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs B #4 Serial #139936
6. Monroe
7. Morehouse LA
8. 1.2 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27688/80-764
2. 17-067-20350-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs B #3 Serial #139754
6. Monroe
7. Morehouse LA
8. 1.2 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27689/80-964
2. 17-073-20291-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-163
6. Monroe Gas Field
7. Ouachita LA
8. 2.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27690/80-963
2. 17-073-20289-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-162
6. Monroe Gas Field
7. Ouachita LA
8. 2.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27691/80-962
2. 17-073-20299-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-161
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27692/80-961
2. 17-073-20288-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-160
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27693/80-946
2. 17-111-20249-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lbr Co #N-189
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27694/80-945
2. 17-111-20209-0000
3. 108 000 000
4. IMC Exploration Co
5. Union Prod #N-190
6. Monroe Gas Field
7. Union LA
8. 11.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27695/80-971
2. 17-073-20354-0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F-143
6. Monroe Gas Field
7. Ouachita LA
8. 5.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27696/80-970
2. 17-073-20353-0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F-142
6. Monroe Gas Field
7. Ouachita LA
8. 5.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27697/80-969
2. 17-073-20352-0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F-141

6. Monroe Gas Field
7. Ouachita LA
8. 5.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27698/80-968
2. 17-073-20351-0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F-140
6. Monroe Gas Field
7. Ouachita LA
8. 5.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27699/80-763
2. 17-067-20342-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs B #2 Serial #139720
6. Monroe
7. Morehouse LA
8. 1.2 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27700/80-762
2. 17-067-20394-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs B #1 Serial #140252
6. Monroe
7. Morehouse LA
8. 1.2 million cubic feet
9. April 16, 1980
10. Gas Transmission Corp

1. 80-27701/80-761
2. 17-067-20425-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs A #4 Serial #140616
6. Monroe
7. Morehouse LA
8. 1.1 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27702/80-760
2. 17-067-20431-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs A #2 Serial #140798
6. Monroe
7. Morehouse LA
8. 1.1 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27703/80-759
2. 17-067-20297-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs A #1 Serial #140797
6. Monroe
7. Morehouse LA
8. 1.1 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27704/80-758
2. 17-067-20422-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Julius White #3 Serial #140512
6. Monroe
7. Morehouse LA
8. 2.1 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27705/80-875
2. 17-073-21177-0000
3. 103 000 000
4. Primos Production Co
5. Arent No 5
6. Monroe Field
7. Ouachita LA
8. 25.7 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27706/80-874
2. 17-073-21176-0000
3. 103 000 000
4. Primos Production Co
5. Arent No 1
6. Monroe Field
7. Ouachita LA
8. 41.1 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27707/80-873
2. 17-111-21813-0000
3. 103 000 000
4. Primos Production Co
5. Steele No 2
6. Monroe Field
7. Union LA
8. 25.7 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27708/80-872
2. 17-111-21812-0000
3. 103 000 000
4. Primos Production Co
5. Steele No 1
6. Monroe Field
7. Union LA
8. 30.8 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27709/80-871
2. 17-073-21126-0000
3. 103 000 000
4. Primos Production Co
5. Lieber No 1
6. Monroe Field
7. Ouachita LA
8. 11.3 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27710/80-846
2. 17-067-21386-0000
3. 103 000 000
4. Nip N Tuck Minerals Inc
5. Pipes #6
6. Monroe Gas
7. Morehouse LA
8. 36.5 million cubic feet
9. April 16, 1980
10. Louisiana Gas Sercice Co

1. 80-27711/80-844
2. 17-067-21176-0000
3. 108 000 000
4. Relco Exploration Co Inc
5. USA #2
6. Monroe
7. Morehouse LA
8. 7.5 million cubic feet
9. April 16, 1980
10. Georgia Pacific Corp

1. 80-27712/80-843
2. 17-067-21175-0000
3. 108 000 000
4. Relco Exploration Co Inc
5. USA #1
6. Monroe Gas
7. Morehouse LA
8. .8 million cubic feet
9. April 16, 1980
10. Georgia Pacific Corp

1. 80-27713/80-842
2. 17-073-20662-0000
3. 108 000 000
4. Equity Monroe Partners
5. Maude Harris No 1 #148774
6. Monroe Gas
7. Ouachita LA
8. .7 million cubic feet
9. April 16, 1980
10. Strahan Oil & Gas Co Inc

1. 80-27714/80-772
2. 17-111-20642-0000
3. 108 000 000
4. Investment Trends Corp
5. Dickson #1
6. Monroe
7. Union LA
8. .3 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27715/80-771
2. 17-111-20713-0000
3. 108 000 000
4. Investment Trends Corp
5. Wilson #1
6. Monroe
7. Union LA
8. .3 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27716/80-725
2. 17-073-21103-0000
3. 108 000 000
4. Glenda Petroleum Corp
5. Perry Heirs No 21 Ser #160680
6. Monroe
7. Ouachita LA
8. 9.1 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27717/80-976
2. 17-067-20390-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-197
6. Monroe Gas Field
7. Morehouse LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27718/80-975
2. 17-073-20335-0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F-135
6. Monroe Gas Field
7. Ouachita LA
8. 4.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27719/80-974
2. 17-073-20334-0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F-134
6. Monroe Gas Field
7. Ouachita LA
8. 4.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27720/80–973
2. 17–073–20333–0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F–133
6. Monroe Gas Field
7. Ouachita LA
8. 4.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27721/80–972
2. 17–073–20332–0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F–132
6. Monroe Gas Field
7. Ouachita LA
8. 5.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27722/80–779
2. 17–073–20937–0000
3. 108 000 000
4. Investment Trends Corp
5. Crescent #2
6. Monroe
7. Ouachita LA
8. .2 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80–27723/80–981
2. 17–067–20397–0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F–189
6. Monroe Gas Field
7. Morehouse LA
8. .0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27724/80–980
2. 17–067–20385–0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F–190
6. Monroe Gas Field
7. Morehouse LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27725/80–979
2. 17–067–20386–0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F–191
6. Monroe Gas Field
7. Morehouse LA
8. 7.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27726/80–978
2. 17–073–20283–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F–146
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27727/80–977
2. 17–073–20285–0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F–147
6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27728/80–944
2. 17–111–20211–0000
3. 108 000 000
4. IMC Exploration Co
5. Union Prod #N–191
6. Monroe Gas Field
7. Union LA
8. 4.8 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27729/80–943
2. 17–111–20192–0000
3. 108 000 000
4. IMC Exploration Co
5. Westbrook #1
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27730/80–942
2. 17–111–20193–0000
3. 108 000 000
4. IMC Exploration Co
5. Westbrook #2
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27731/80–751
2. 17–109–22123–0000
3. 102 000 000
4. Sun Oil Company
5. VUC State Nelson et al #13
6. Point Au Fer
7. Terrebonne LA
8. 274.0 million cubic feet
9. April 16, 1980
10. Transcontinental Gas Pipe Line Corp

1. 80–27732/80–757
2. 17–067–20418–0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Julius White #1 serial #140453
6. Monroe
7. Morehouse LA
8. 2.1 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80–27733/80–756
2. 17–067–20421–0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Julius White #2 serial #140511
6. Monroe
7. Morehouse LA
8. 2.1 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80–27734/80–755
2. 17–067–20427–0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Green #1 serial #140596
6. Monroe
7. Morehouse LA
8. 4.3 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80–27735/80–754
2. 17–067–20419–0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Vernon White #2 serial #140509
6. Monroe
7. Morehouse LA
8. 1.6 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80–27736/80–753
2. 17–067–20417–0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Vernon White #1 serial #140452
6. Monroe
7. Morehouse LA
8. 1.6 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80–27737/80–747
2. 17–055–20149–0000
3. 103 000 000
4. Dyco Petroleum Corp
5. Broussard #1
6. Maurice
7. Lafayette LA
8. 10.0 million cubic feet
9. April 16, 1980
10. Louisiana Intrastate Gas Corp

1. 80–27738/80–967
2. 17–073–20350–0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F–139
6. Monroe Gas Field
7. Ouachita LA
8. 5.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27739/80–966
2. 17–073–20362–0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F–138
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27740/80–965
2. 17–073–20348–0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F–137
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27741/80–1020
2. 17–067–20450–0000
3. 108 000 000
4. IMC Exploration Co
5. Ethridge #F–240
6. Monroe Gas Field
7. Morehouse LA
8. 2.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80–27742/80–1019
2. 17–073–20376–0000
3. 108 000 000
4. IMC Exploration Co
5. Central Immigration #F–218

6. Monroe Gas Field
7. Ouachita LA
8. 3.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27743/80-1018
2. 17-111-20284-0000
3. 108 000 000
4. IMC Exploration Co
5. Green #N-227
6. Monroe Gas Field
7. Union LA
8. 5.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27744/80-1017
2. 17-067-20412-0000
3. 108 000 000
4. IMC Exploration Co
5. Temsas Delta #F-206
6. Monroe Gas Field
7. Morehouse LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27745/80-1016
2. 17-067-20413-0000
3. 108 000 000
4. IMC Exploration Co
5. Temsas Delta #F-207
6. Monroe Gas Field
7. Morehouse LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27746/80-1015
2. 17-067-20414-0000
3. 108 000 000
4. IMC Exploration Co
5. Temsas Delta #F-208
6. Monroe Gas Field
7. Morehouse LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27747/80-1014
2. 17-067-20415-0000
3. 108 000 000
4. IMC Exploration Co
5. Temsas Delta #F-209
6. Monroe Gas Field
7. Morehouse LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27748/80-1013
2. 17-111-20285-0000
3. 108 000 000
4. IMC Exploration Co
5. Green #N-228
6. Monroe Gas Field
7. Union LA
8. 5.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27749/80-1012
2. 17-067-20379-0000
3. 108 000 000
4. IMC Exploration Co
5. Griffing #F-177
6. Monroe Gas Field
7. Morehouse LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27750/80-1011
2. 17-111-20267-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-195
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27751/80-1010
2. 17-111-20271-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling Lumber Co #N-196
6. Monroe Gas Field
7. Union LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27752/80-1008
2. 17-073-20290-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate F-164
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27753/80-1009
2. 17-073-20292-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-165
6. Monroe Gas Field
7. Ouachita LA
8. 5.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27754/80-1007
2. 17-073-20349-0000
3. 108 000 000
4. IMC Exploration Co
5. Briggs #F-137
6. Monroe Gas Field
7. Ouachita LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27755/80-1006
2. 17-073-20345-0000
3. 108 000 000
4. IMC Exploration Co
5. Central Imigration #F-238
6. Monroe Gas Field
7. Ouachita LA
8. 2.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27756/80-1005
2. 17-073-20364-0000
3. 108 000 000
4. IMC Exploration Co
5. Central Immigration #F-237
6. Monroe Gas Field
7. Ouachita LA
8. 2.5 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27757/80-742
2. 17-073-00549-0000
3. 108 000 000
4. Sho-Van Gas Producing Co Inc
5. West Virginia #3
6. Monroe Gas Field
7. Ouachita LA
8. 3.1 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80-27758/80-741
2. 17-073-00585-0000
3. 108 000 000
4. Sho-Van Gas Producing Co Inc
5. West Virginia #1
6. Monroe Gas Field
7. Ouachita LA
8. 4.4 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80-27759/80-770
2. 17-111-20782-0000
3. 108 000 000
4. Investment Trends Corp
5. Hearn #3
6. Monroe
7. Union LA
8. .2 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp

1. 80-27760/80-769
2. 17-111-20677-0000
3. 108 000 000
4. Investment Trends Corp
5. Taunton #1
6. Monroe
7. Union LA
8. .5 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27761/80-768
2. 17-111-20701-0000
3. 108 000 000
4. Investment Trends Corp
5. Hearn #1
6. Monroe
7. Union LA
8. .2 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp.

1. 80-27762-767
2. 17-067-20432-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs C #3 serial #140799
6. Monroe
7. Morehouse LA
8. 1.6 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp.

1. 80-27763/80-766
2. 17-067-20299-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Snyder Heirs C # serial #140615
6. Monroe
7. Morehouse LA
8. 1.6 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp.

1. 80-27764/80-879
2. 17-073-20147-0000
3. 108 000 000
4. Allied Petroleum Co
5. Smith #1
6. Monroe
7. Ouachita LA
8. 10.6 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27765/80-878
2. 17-073-20325-0000
3. 108 000 000
4. Allied Petroleum Co
5. Kollitz #3
6. Monroe
7. Ouachita LA
8. 8.9 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27766/80-877
2. 17-073-20324-0000
3. 108 000 000
4. Allied Petroleum Co
5. Kollitz #2
6. Monroe
7. Ouachita LA
8. 6.4 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27767/80-876
2. 17-073-00228-0000
3. 108 000 000
4. Allied Petroleum Co
5. Kollitz #1
6. Monroe
7. Ouachita LA
8. 6.0 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27768/80-815
2. 17-111-21204-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon S No 1 serial #155719
6. Monroe
7. Union LA
8. 2.4 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27769/80-814
2. 17-111-21201-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Cora Jarmon et al S No 6 serial #155
6. Monroe
7. Union LA
8. 4.2 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27770/80-813
2. 17-111-21200-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Cora Jarmon et al S No 5 serial #1556
6. Monroe
7. Union LA
8. 4.2 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27771/80-812
2. 17-111-21199-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Cora Jarmon et al S No 4 serial #155
6. Monroe
7. Union LA
8. 4.2 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27772/80-811
2. 17-111-21003-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Cora Jarmon et al S No 3 serial #1526
6. Monroe
7. Union Parish LA
8. 4.2 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27773/80-810
2. 17-111-21002-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Cora Jarmon et al S No 2 serial #152
6. Monroe
7. Union Parish LA
8. 4.2 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27774/80-809
2. 17-111-21001-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Cora Jarmon et al S No 1 serial #1526
6. Monroe
7. Union Parish LA
8. 4.2 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27775/80-808
2. 17-111-21213-0000
3. 103 000 000
4. Ergon Inc
5. Mary Phillips No 1
6. Monroe (6824)
7. Union (056) LA
8. 10.4 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27776/80-807
2. 17-111-21230-0000
3. 103 000 000
4. Ergon Inc
5. W T Miller No 3
6. Monroe (6824)
7. Union (056) LA
8. 7.3 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27777/80-806
2. 17-111-21212-0000
3. 103 000 000
4. Ergon Inc
5. W T Miller No 2
6. Monroe (6824)
7. Union LA
8. 4.9 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27778/80-839
2. 17-073-20225-0000
3. 108 000 000
4. James A Noe
5. Davis M No 2
6. Monroe Gas Field
7. Ouachita LA
8. 6.0 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27779/80-838
2. 17-073-20221-0000
3. 108 000 000
4. James A Noe
5. Davis M No 1
6. Monroe Gas Field
7. Ouachita LA
8. 6.0 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27780/80-837
2. 17-073-00530-0000
3. 108 000 000
4. Gemini Explorations Inc
5. Union Producing Co E #2—106079
6. Monroe
7. Ouachita LA
8. 8.5 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27781/80-795
2. 17-111-21232-0000
3. 103 000 000
4. Ergon Inc
5. L B Wofford No 1
6. Monroe (6824)
7. Union (056) LA
8. 5.4 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27782/80-794
2. 17-111-21231-0000
3. 103 000 000
4. Ergon Inc
5. Vua Roy Oliver et al No 1
6. Monroe (6824)
7. Union LA
8. 5.5 million cubic feet
9. April 16, 1980
10. Texas Gas Transmission Corp

1. 80-27783/80-793
2. 17-111-21012-0000
3. 108 000 000
4. IMC Exploration Co
5. Frost Lumber Ind #11
6. Monroe Gas Field
7. Union LA
8. .8 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27784/80-792
2. 17-111-21013-0000
3. 108 000 000
4. IMC Exploration Co
5. Frost Lumber Ind #12
6. Monroe Gas Field
7. Union LA
8. .7 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27785/80-920
2. 17-111-20336-0000
3. 108 000 000
4. Luffey Gas Corp
5. Montery #6
6. Monroe Gas Field
7. Union LA
8. 4.9 million cubic feet
9. April 16, 1980
10. La Gas Prod A Division of IMC Co

1. 80-27786/80-836
2. 17-073-00529-0000
3. 108 000 000
4. Gemini Explorations Inc
5. Union Producing Co E #1—104273
6. Monroe
7. Ouachita LA
8. 8.5 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27787/80-821
2. 17-111-21008-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon II No 3 serial #152885

6. Monroe
7. Union Parish LA
8. 1.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27788/80-820
2. 17-111-21007-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon II No 2 serial #152884
6. Monroe
7. Union Parish LA
8. 1.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27789/80-919
2. 17-111-20330-0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkroft A #3
6. Monroe Gas Field
7. Union LA
8. 7.3 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80-27790/80-918
2. 17-111-20362-0000
3. 108 000 000
4. Luffey Gas Corp
5. Frost #2
6. Monroe Gas Field
7. Union LA
8. 7.0 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80-27791/80-917
2. 17-111-20344-0000
3. 108 000 000
4. Luffey Gas Corp
5. Olinkraft A #6
6. Monroe Gas Field
7. Union LA
8. 3.5 million cubic feet
9. April 16, 1980
10. Louisiana Gas Production Co

1. 80-27792/80-925
2. 17-111-20173-0000
3. 108 000 000
4. IMC Exploration Co
5. Grayling LBR Co #N-171
6. Monroe Gas Field
7. Union LA
8. 8.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27793/80-992
2. 17-073-20371-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-172
6. Monroe Gas Field
7. Ouachita LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27794/80-991
2. 17-073-20372-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-173
6. Monroe Gas Field
7. Ouachita LA
8. 4.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27795/80-990
2. 17-067-20416-0000
3. 108 000 000
4. IMC Exploration Co
5. Tensas Delta #F-210
6. Monroe Gas Field
7. Morehouse LA
8. 6.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27796/80-989
2. 17-073-20280-0000
3. 108 000 000
4. IMC Exploration Co
5. Fairbanks Real Estate #F-157
6. Monroe Gas Field
7. Ouachita LA
8. 1.0 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27797/80-1043
2. 17-073-20345-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-221
6. Monroe Gas Field
7. Ouachita LA
8. 1.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27798/80-1042
2. 17-073-20358-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-222
6. Monroe Gas Field
7. Ouachita LA
8. 1.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co

1. 80-27799/80-895
2. 17-073-20243-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil MR 850 #3
6. Monroe
7. Ouachita LA
8. 3.3 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27800/80-894
2. 17-073-20242-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil MR 850 #2
6. Monroe
7. Ouachita LA
8. 4.2 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27801/80-893
2. 17-073-20241-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil MR 850 #1
6. Monroe
7. Ouachita LA
8. 13.5 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27802/80-892
2. 17-073-20254-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil MR 152 #1
6. Monroe
7. Ouachita LA
8. 5.6 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27803/80-891
2. 17-073-20384-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil 9460 #5
6. Monroe
7. Ouachita LA
8. 11.5 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27804/80-890
2. 17-073-20316-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil 9460 #4
6. Monroe
7. Ouachita LA
8. 16.0 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27805/80-870
2. 17-111-20440-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. R Savage G No 1 Serial #147399
6. Monroe
7. Union Parish LA
8. 6.1 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp Central Transmission Inc

1. 80-27806/80-869
2. 17-111-20878-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. R Savage R No 1 Serial #151659
6. Monroe
7. Union Parish LA
8. 5.9 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp Central Transmission Inc

1. 80-27807/80-819
2. 17-111-21006-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon II No 1 Serial #152883
6. Monroe
7. Union Parish LA
8. 1.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27808/80-818
2. 17-111-21000-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. R L Edwards Et Al S No 2 Serial #152
6. Monroe
7. Union Parish LA
8. 2.3 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27809/80-817
2. 17-111-20999-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. R L Edwards Et Al S No 1 Serial #15
6. Monroe
7. Union Parish LA
8. 2.3 million cubic feet

9. April 16, 1980
10. Central Transmission Inc
1. 80-27810/80-816
2. 17-111-21205-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon S No 2 Serial #155720
6. Monroe
7. Union Parish LA
8. 2.4 million cubic feet
9. April 16, 1980
10. Central Transmission Inc
1. 80-27811/80-850
2. 17-051-20511-0000
3. 103 000 000
4. Texaco Inc
5. VUA BDC UA 121
6. Bay de Chene
7. Jefferson LA
8. 35.0 million cubic feet
9. April 16, 1980
10. Kaiser Aluminum & Chemical Corp
1. 80-27812/80-849
2. 17-101-21102-0000
3. 107 000 000
4. Exxon Corp
5. Williams Inc No 1
6. Weeks Island
7. St Mary LA
8. 4.0 million cubic feet
9. April 16, 1980
10.
1. 80-27813/80-848
2. 17-073-21183-0000
3. 108 000 000
4. Lock Arbor Production Co
5. Smith Et Al #15
6. Monroe Gas Field
7. Ouachita LA
8. 8.0 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co
1. 80-27814/80-867
2. 17-111-20595-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. W Ward H No 1 Serial #147774
6. Monroe
7. Union LA
8. 2.3 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27815/80-867
2. 17-111-20653-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. M Noland H No 3 Serial #148966
6. Monroe
7. Union LA
8. 2.0 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27816/80-866
2. 17-111-20594-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. M Noland H No 2 Serial #147773
6. Monroe
7. Union LA
8. 2.0 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27817/80-865
2. 17-111-20593-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. M Noland H No 1 Serial #147772
6. Monroe
7. Union LA
8. 2.0 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27818/80-1045
2. 17-073-20344-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-219
6. Monroe Gas Field
7. Ouachita LA
8. 1.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co
1. 80-27819/80-1044
2. 17-073-20315-0000
3. 108 000 000
4. IMC Exploration Co
5. Richland Plantation #F-220
6. Monroe Gas Field
7. Ouachita LA
8. 1.6 million cubic feet
9. April 16, 1980
10. IMC Pipeline Co
1. 80-27820/80-864
2. 17-111-20438-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. L Parker III No 2 Serial #145217
6. Monroe
7. Union LA
8. .8 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27821/80-863
2. 17-111-20437-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. L Parker III No 1 serial #145216
6. Monroe
7. Union La
8. .8 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27822/80-862
2. 17-111-20436-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. L Parker J No 2 serial #145215
6. Monroe
7. Union La
8. 2.0 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27823/80-861
2. 17-111-20435-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. L Parker J No 1 serial #145214
6. Monroe
7. Union La
8. 192.7 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27824/80-860
2. 17-111-20398-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon-Arco III No 6 serial #144320
6. Monroe
7. Union La
8. .3 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27825/80-859
2. 17-111-20399-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon-Arco III No 5 serial #144321
6. Monroe
7. Union La
8. .3 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27826/80-858
2. 17-111-20400-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon-Arco III No 2 serial #144322
6. Monroe
7. Union La
8. .3 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27827/80-857
2. 17-111-20401-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon-Arco III No 3 serial #144323
6. Monroe
7. Union La
8. .3 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27828/80-856
2. 17-111-20402-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon-Arco III No 2 Serial #144324
6. Monroe
7. Union La
8. .3 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27829/80-855
2. 17-111-20403-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon-Arco III No 1 serial #144325
6. Monroe
7. Union La
8. .3 million cubic feet
9. April 16, 1980
10. Gas Transportation Corp
1. 80-27830/80-830
2. 17-111-20897-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. J H Reppond B No 2 serial #151767
6. Monroe
7. Union La
8. 5.2 million cubic feet
9. April 16, 1980
10. Central Transmission Inc
1. 80-27831/80-829
2. 17-067-21000-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. International Paper D No 7 serial #
6. Monroe
7. Morehouse La
8. 5.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc
1. 80-27832/80-828

2. 17-067-20999-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. International Paper D No 6 serial #1
6. Monroe
7. Morehouse La
8. 5.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27833/80-827
2. 17-067-20981-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. International Paper D No 5 serial #
6. Monroe
7. Morehouse La
8. 5.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27834/80-826
2. 17-067-20980-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. International Paper D No 4 serial #1
6. Monroe
7. Morehouse La
8. 5.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27835/80-825
2. 17-067-20977-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. International Paper D No 1 serial #
6. Monroe
7. Morehouse La
8. 5.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27836/80-824
2. 17-067-20952-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. International Paper F No 2 serial #1
6. Monroe
7. Morehouse La
8. 8.1 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27837/80-823
2. 17-067-20951-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. International Paper F No 1 serial #
6. Monroe
7. Morehouse La
8. 8.1 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27838/80-822
2. 17-111-21009-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon II No 9 serial #152886
6. Monroe
7. Union La
8. 1.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27839/80-889
2. 17-073-20311-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil 9460 #3
6. Monroe
7. Ouachita La
8. 10.5 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27840/80-888
2. 17-073-20310-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil 9460 #2
6. Monroe
7. Ouachita La
8. 13.8 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27841/80-887
2. 17-073-20282-0000
3. 108 000 000
4. Allied Petroleum Co
5. Pennzoil 9460 #1
6. Monroe
7. Ouachita La
8. 8.3 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27842/80-886
2. 17-073-20105-0000
3. 108 000 000
4. Allied Petroleum Co
5. Osterland #C-1
6. Monroe
7. Ouachita La
8. 1.6 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27843/80-885
2. 17-073-20094-0000
3. 108 000 000
4. Allied Petroleum Co
5. Osterland #3
6. Monroe
7. Ouachita La
8. 5.2 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27844/80-884
2. 17-073-20093-0000
3. 108 000 000
4. Allied Petroleum Co
5. Osterland #2
6. Monroe
7. Ouachita La
8. 4.5 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27845/80-883
2. 17-073-20092-0000
3. 108 000 000
4. Allied Petroleum Co
5. Osterland #1
6. Monroe
7. Ouachita La
8. 6.6 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27846/80-882
2. 17-073-20227-0000
3. 108 000 000
4. Allied Petroleum Co
5. Waddill #2
6. Monroe
7. Ouachita La
8. 5.2 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27847/80-881
2. 17-073-20226-0000
3. 108 000 000
4. Allied Petroleum Co
5. Waddill #1
6. Monroe
7. Ouachita La
8. 5.2 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27848/80-880
2. 17-073-20175-0000
3. 108 000 000
4. Allied Petroleum Co
5. Smith #2
6. Monroe
7. Ouachita La
8. 10.7 million cubic feet
9. April 16, 1980
10. United Gas Pipeline Co

1. 80-27849/80-835
2. 17-083-20308-0000
3. 108 000 000
4. Strahan Oil & Gas Co Inc
5. O B Mitchell #4
6. Richland Gas
7. Richland La
8. 9.9 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27850/80-834
2. 17-083-20202-0000
3. 108 000 000
4. Strahan Oil & Gas Co Inc
5. W G Taylor #1
6. Richland Gas
7. Richland La
8. 13.6 million cubic feet
9. April 16, 1980
10. Mid Louisiana Gas Co

1. 80-27851/80-833
2. 17-111-20961-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon Cti No 3 Serial #152380
6. Monroe
7. Union LA
8. 4.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27852/80-832
2. 17-111-20960-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. Exxon Cti No 2 Serial #152379
6. Monroe
7. Union LA
8. 4.7 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27853/80-831
2. 17-111-20895-0000
3. 108 000 000
4. Equitable Petroleum Corp
5. N S McCormick B No 1 Serial #151765
6. Monroe
7. Union Parish LA
8. 3.3 million cubic feet
9. April 16, 1980
10. Central Transmission Inc

1. 80-27854/80-854
2. 17-049-20120-0000
3. 102 000 000
4. McGoldrick Oil Co
5. Hoss Ra Suff H L Hogan #1
6. Clear Branch

7. Jackson LA
8. 1095.0 million cubic feet
9. April 16, 1980
10. Louisiana Intrastate Gas Corp

1. 80–27855/80–853
2. 17–063–20020–0000
3. 107 000 000
4. Amoco Production Co
5. Barnett Heirs No 1
6. Lockhart Crossing
7. Livingston LA
8. 1825.0 million cubic feet
9. April 16, 1980
10.

1. 80–27856/80–851
2. 17–073–00005–0000
3. 108 000 000
4. Pennzoil Producing Co
5. Smith No 4–D
6. Monroe
7. Ouachita LA
8. 12.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

1. 80–27857/80–852
2. 17–057–21382–0000
3. 107 000 000
4. Union Oil Co of California
5. State Lease 3088 Well No 16
6. Timbalier Bay
7. LaFourche LA
8. 40.0 million cubic feet
9. April 16, 1980
10. United Gas Pipe Line Co

Oklahoma Corporation Commission

1. Control Number (F.E.R.C./State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)

1. 80–27406/02957
2. 35–003–00000–0000
3. 108 000 000
4. Vaughn Good
5. Castle =1
6. Wildcat
7. Alfalfa OK
8. 21.0 million cubic feet
9. April 17, 1980
10. Pioneer Gas Products Co

1. 80–27407/02962
2. 35–053–00000–0000
3. 103 000 000
4. Vaughn Good
5. Parker =1
6. South Deer Creek
7. Grant OK
8. 35.0 million cubic feet
9. April 17, 1980
10.

1. 80–27408/02558
2. 35–139–00000–0000
3. 108 000 000
4. Kaiser Francis Oil Co
5. A E Sharp =1
6. Hugoton
7. Texas OK
8. 21.0 million cubic feet
9. April 17, 1980
10. Cities Service Gas Co

1. 80–27409/02955
2. 35–003–00000–0000
3. 103 000 000
4. Vaughn Good
5. Keiffer #1
6. Ringwood
7. Alfalfa OK
8. 40.0 million cubic feet
9. April 17, 1980
10. Oklahoma Gas and Electric Co

1. 80–27410/02964
2. 35–019–21670–0000
3. 103 000 000
4. Shell Oil Co
5. Pruitt 17
6. Sholem Alechem
7. Carter OK
8. 110.0 million cubic feet
9. April 17, 1980
10. Mobil Oil Corp

1. 80–27411/02988
2. 35–063–26556–0000
3. 108 000 000
4. Mitchell Oil Co
5. Argo #1
6. Greasy Creek
7. Hughes OK
8. 1.5 million cubic feet
9. April 17, 1980
10. Public Service Co of Oklahoma

1. 80–27412/02451
2. 35–093–00000–0000
3. 108 000 000
4. Okmar Oil Co
5. Burdick 1–23
6. Goltry
7. Major OK
8. 14.0 million cubic feet
9. April 17, 1980
10. Union Texas Petroleum

1. 80–27413/02984
2. 35–059–20371–0000
3. 108 000 000
4. Cotton Petroleum Corp
5. Chabino No 1
6. Lovedale
7. Harper OK
8. 18.5 million cubic feet
9. April 17, 1980
10. Delhi Gas Pipeline Corp

1. 80–27414/03001
2. 35–093–21291–0000
3. 103 000 000
4. Universal Resources Corp
5. State #2–33
6. Dane
7. Major OK
8. 13.0 million cubic feet
9. April 17, 1980
10. Delhi Gas Pipeline Corp

1. 80–27415/03020
2. 35–059–20735–0000
3. 103 000 000
4. Gulf Oil Corp
5. W A Dunsworth No 3–27
6. Laverne
7. Harper OK
8. 178.0 million cubic feet
9. April 17, 1980
10. Colorado Interstate Gas Co, Michigan Wisconsin Pipeline Co

1. 80–27416/03019
2. 35–103–20792–0000
3. 103 000 000
4. Texas American Oil Corp
5. Oren Clavin Well No 2
6. Northeast Billings Prospect
7. Noble OK
8. 16.0 million cubic feet
9. April 17, 1980
10. Atlantic Richfield Company

1. 80–27417/03024
2. 35–071–21158–0000
3. 103 000 000
4. Demco Oil & Gas Company
5. Hensley #1
6. Unnamed
7. Kay OK
8. 6.8 million cubic feet
9. April 17, 1980
10. Chase Exploration Corporation, Cities Service Gas Co

1. 80–27418/01236
2. 35–137–21939–0000
3. 103 000 000
4. Arco Oil and Gas Company
5. East Velma West Blk Sims Sant Ut #42
6. Sho-Vel-Tum
7. Stephens OK
8. 3.6 million cubic feet
9. April 17, 1980
10. Getty Oil Company

1. 80–27419/03310
2. 35–147–20809–0000
3. 103 000 000
4. Ladd Petroleum Corp
5. Cato-Woodall (BN–8)
6. N E Wayside
7. Washington OK
8. .0 million cubic feet
9. April 17, 1980
10. Cities Service Gas Co

1. 80–27420/03014
2. 35–139–00000–0000
3. 108 000 000
4. Cities Service Co
5. Roofner A #1 (Topeka)
6. Carthage
7. Texas OK
8. 4.8 million cubic feet
9. April 17, 1980
10. Panhandle Eastern Pipe Line Co

1. 80–27421/03026
2. 35–017–21055–0000
3. 103 000 000
4. NFC Petroleum Corp
5. Drabek No 1–18
6. Richland
7. Canadian OK
8. 200.0 million cubic feet
9. April 17, 1980
10. Continental Oil Company, Phillips Petroleum Co

1. 80–27422/03018
2. 35–103–20737–0000
3. 103 000 000
4. Texas American Oil Corporation
5. Oren Clavin Well No 1
6. Northeast Billings Prospect
7. Noble OK
8. 16.0 million cubic feet
9. April 17, 1980
10. Atlantic Richfield Company

1. 80–27423/03041
2. 35–011–20482–0000
3. 108 000 000 Denied
4. Universal Resources Corporation
5. Goforth #1–30

6. Okeene Northwest
7. Blaine OK
8. 18.0 million cubic feet
9. April 17, 1980
10. Delhi Gas Pipeline Corporation

1. 80–27424/02992
2. 35–109–20396–0000
3. 103 000 000
4. Cities Service Company
5. Lord Prue Sand Unit #405
6. Oklahoma City
7. Oklahoma OK
8. .3 million cubic feet
9. April 17, 1980
10. Phillips Petroleum Company

1. 80–27425/02916
2. 35–043–00000–0000
3. 108 000 000
4. Sarkeys Inc
5. Bailey No 1–18
6. N W Leedey
7. Dewey OK
8. 2.5 million cubic feet
9. April 17, 1980
10. Phillips Petroleum Company

1. 80–27426/02980
2. 35–047–00000–0000
3. 103 000 000
4. Petro-Lewis Corporation
5. Havlik 18–1
6. N W Bison
7. Garfield OK
8. 75.0 million cubic feet
9. April 17, 1980
10. Panhandle Eastern Pipeline Co

1. 80–27427/02981
2. 35–047–00000–0000
3. 103 000 000
4. Petro-Lewis Corporation
5. Goodpasture 26–2
6. Sooner Trend
7. Garfield OK
8. 19.0 million cubic feet
9. April 17, 1980
10. Partnership Properties Co

1. 80–27428/02982
2. 35–093–00000–0000
3. 103 000 000
4. Petro-Lewis Corporation
5. Osborne 25–2
6. Sooner Trend
7. Major OK
8. 52.0 million cubic feet
9. April 17, 1980
10. Partnership Properties Co

1. 80–27429/02978
2. 35–073–22010–0000
3. 103 000 000
4. Petro-Lewis Corporation
5. Pribyl 4–2
6. Sooner Trend
7. Kingfisher OK
8. 7.0 million cubic feet
9. April 17, 1980
10. Exxon Company USA

1. 80–27430/02976
2. 35–073–21921–0000
3. 103 000 000
4. Petro-Lewis Corporation
5. Marcy 9–1
6. Sooner Trend
7. Kingfisher OK
8. 19.0 million cubic feet
9. April 17, 1980
10. Partnership Properties Co

1. 80–27431/02979
2. 35–073–22059–0000
3. 103 000 000
4. Petro-Lewis Corporation
5. Nixon 2–1 Edna
6. Sooner Trend
7. Kingfisher OK
8. 14.0 million cubic feet
9. April 17, 1980
10. Partnership Properties Co

1. 80–27432/02993
2. 35–017–21030–0000
3. 103 000 000
4. Phillips Petroleum Company
5. Parizek A–1
6. Yukon
7. Canadian OK
8. 333.0 million cubic feet
9. April 17, 1980
10. Panhandle Eastern Pipeline Co

1. 80–27433/02995
2. 35–093–21403–0000
3. 103 000 000
4. Universal Resources Corporation
5. Cain #1–20
6. Dane
7. Major OK
8. 30.0 million cubic feet
9. April 17, 1980
10. Delhi Gas Pipeline Corporation

1. 80–27434/02996
2. 35–093–21277–0000
3. 103 000 000
4. Universal Resources Corporation
5. McConnell #1–26
6. Okeene NW
7. Major OK
8. 18.0 million cubic feet
9. April 17, 1980
10. Delhi Gas Pipeline Corporation

1. 80–27435/02985
2. 35–025–00060–0000
3. 108 000 000
4. Cig Exploration Inc
5. Wilson #1
6. Keyes
7. Cimarron OK
8. 5.0 million cubic feet
9. April 17, 1980
10. Colorado Interstate Gas Co

1. 80–27863/03043
2. 35–093–21573–0000
3. 103 000 000
4. Pioneer Production Corp
5. Jellison #2–6 U
6. NE Chester
7. Major OK
8. 500.0 million cubic feet
9. April 18, 1980
10. Delhi Gas Pipe Line Corp

1. 80–27864/03042
2. 35–093–21573–0000
3. 103 000 000
4. Pioneer Production Corp
5. Jellison #2–6L
6. N E Chester
7. Major OK
8. 730.0 million cubic feet
9. April 18, 1980
10. Dehli Gas Pipeline Corp

1. 80–27865/03373
2. 35–017–20869–0000
3. 103 000 000
4. Conoco Inc
5. Porter Unit No 1–1
6. S El Reno
7. Canadian OK
8. 76.3 million cubic feet
9. April 18, 1980
10. Transok Pipe Line Co

1. 80–27866/03044
2. 35–047–21705–0000
3. 103 000 000
4. Andover Oil Co
5. Markwell Guardian #4–1
6. Enid Northeast
7. Garfield OK
8. 140.0 million cubic feet
9. April 18, 1980
10.

1. 80–27867/02615
2. 35–019–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. Walter Neustadt #22
6. Sho Vel Tum
7. Carter OK
8. 12.8 million cubic feet
9. April 18, 1980
10. Lone Star Gas Co

1. 80–27868/03099
2. 35–017–20966–0000
3. 103 000 000
4. Andover Oil Co
5. Ratcliff #19–1
6. Richland
7. Canadian OK
8. 175.0 million cubic feet
9. April 18, 1980
10. Phillips Petroleum Co

1. 80–27869/03101
2. 35–047–21746–0000
3. 103 000 000
4. Andover Oil Co
5. Hedges #22–1
6. Sooner Trend
7. Garfield OK
8. 60.0 million cubic feet
9. April 18, 1980
10.

1. 80–27870/03102
2. 35–103–20822–0000
3. 103 000 000
4. Southwestern Explor Consultants Inc
5. Edwards #1
6. Polo
7. Noble OK
8. .0 million cubic feet
9. April 18, 1980
10. Arco Oil & Gas Co

1. 80–27871/03100
2. 35–129–20361–0000
3. 103 000 000
4. Kerr-McGee Corp
5. Easterling Well #1
6. NE Reydon Field
7. Roger Mills OK
8. .0 million cubic feet
9. April 18, 1980
10. El Paso Natural Gas Co

1. 80–27872/03069
2. 35–051–00000–0000
3. 108 000 000
4. Arco Oil and Gas Co
5. Thomas Charlson #4
6. Chickasha
7. Grady OK
8. 14.0 million cubic feet
9. April 18, 1980
10. Arkansas Louisiana Gas Co

1. 80–27873/03065
2. 35–007–00000–0000
3. 108 000 000
4. Crawley Petroleum Corp
5. Gene Grove =1
6. Light Gas Area
7. Beaver OK
8. 13.0 million cubic feet
9. April 18, 1980
10. Panhandle Eastern Pipe Line Co

1. 80–27874/03375
2. 35–017–20931–0000
3. 103 000 000
4. Conoco Inc
5. Yeck No 1
6. Banner
7. Canadian OK
8. 82.1 million cubic feet
9. April 18, 1980
10. Phillips Petroleum Co

1. 80–27875/03061
2. 35–045–20679–0000
3. 103 000 000
4. An-Son Corp
5. Berryman =1–23
6. Berryman =1–23
7. Ellis OK
8. 110.0 million cubic feet
9. April 18, 1980
10. Panhandle Eastern Pipeline Co

1. 80–27876/03337
2. 35–075–00000–0000
3. 108 000 000
4. Ed L Markwell Jr
5. Osmond No 1–075–11625
6. North Gotebo NE/4 of Sec 4–7N–16W
7. Kiowa OK
8. 15.6 million cubic feet
9. April 18, 1980
10. Oklahoma Natural Gas Co

1. 80–27877/01409
2. 35–117–00000–0000
3. 102 000 000
4. Ronald Grubb
5. State Tract 15-Well No 3
6. Northwest Ingalls
7. Payne OK
8. 200.0 million cubic feet
9. April 18, 1980
10. Colorado Gas Compression Inc

1. 80–27878/01413
2. 35–117–00000–0000
3. 102 000 000
4. Ronald Grubb
5. State Tract 15-Well No 1
6. Northwest Ingalls
7. Payne OK
8. 200.0 million cubic feet
9. April 18, 1980
10. Colorado Gas Compression Inc

1. 80–27879/03035
2. 35–073–00000–0000
3. 108 000 000
4. Kirkpatrick Oil Co
5. Haymaker B No 1
6. Sooner Trend
7. Kingfisher OK
8. 1.2 million cubic feet
9. April 18, 1980
10. Exxon Corp

1. 80–27880/03077
2. 35–059–20387–0000
3. 108 000 000
4. Ong Exploration Inc
5. Smith =1 Well
6. Southwest Parker
7. Harper OK
8. 9.8 million cubic feet
9. April 18, 1980
10. Delhi Gas Pipeline Corp

1. 80–27881/03103
2. 35–093–00000–0000
3. 108 000 000
4. Sun Oil Co
5. Scannell–B Ut No 1
6. Ringwood
7. Major OK
8. 17.0 million cubic feet
9. April 18, 1980
10. Oklahoma Natural Gas Gathering Corp

1. 80–27882/03058
2. 35–017–21098–0000
3. 103 000 000
4. ONG Exploration Inc
5. Zaloudik #4
6. North Yukon
7. Canadian OK
8. .0 million cubic feet
9. April 18, 1980
10.

1. 80–27883/03064
2. 35–047–21656–0000
3. 103 000 000
4. Harper Oil Co
5. Courter #2
6. Sooner Trend
7. Garfield OK
8. 310.0 million cubic feet
9. April 18, 1980
10. Arkansas Louisiana Gas Co

1. 80–27884/03049
2. 35–047–21521–0000
3. 103 000 000
4. Texas American Oil Corp
5. Hubbard Farms Inc Well No 1
6. Sooner Trend
7. Garfield OK
8. 2.0 million cubic feet
9. April 18, 1980
10. Oklahoma Natural Gas Co

1. 80–27885/03105
2. 35–137–00000–0000
3. 108 000 000
4. Arco Oil and Gas Co
5. Beulah A Warden #9
6. Sho-Vel-Tum
7. Stephens OK
8. 7.5 million cubic feet
9. April 18, 1980
10. Getty Oil Co

United States Geological Survey, Casper, Wyoming

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)

1. 80–27858/UC 1299–9
2. 43–407–30563–0000–0
3. 103 000 000
4. Conoco Inc
5. Conoco Federal 35 No 5
6. Ouray
7. Uintah UT
8. 240.0 million cubic feet
9. April 16, 1980
10. Mountain Fuel Supply Co

1. 80–27859/UC 1282–9
2. 43–019–30308–0000–0
3. 103 000 000
4. NP Energy Corporation
5. Federal #31–1A
6. Cisco Dome
7. Grand UT
8. 23.0 million cubic feet
9. April 16, 1980
10. Northwest Pipeline Corp

1. 80–27860/UC 1252–9
2. 43–019–30487–0000–0
3. 103 000 000
4. NP Energy Corp
5. Federal #14–2
6. Cisco Dome
7. Grand UT
8. 36.0 million cubic feet
9. April 16, 1980
10. Northwest Pipeline Corp

1. 80–27861/UC 1245–9
2. 43–019–30356–0000–0
3. 103 000 000
4. NP Energy Corp
5. Federal 24–1
6. Cisco Dome Area
7. Grand UT
8. 18.2 million cubic feet
9. April 16, 1980
10. Northwest Pipeline Corp

1. 80–27862/UC 1244–9
2. 43–019–30485–0000–0
3. 103 000 000
4. NP Energy Corp
5. Federal #1–11
6. Cisco Dome
7. Grand UT
8. 144.0 million cubic feet
9. April 16, 1980
10. Northwest Pipeline Corp

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this notice in the **Federal Register.**

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–15812 Filed 5–22–80; 8:45 am]

BILLING CODE 6450–85–M

[No. 204]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

May 19, 1980.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Mississippi Oil and Gas Board

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-31796/19-80-483
2. 23-087-20033-0000
3. 102 000 000
4. Elf Aquitaine Inc
5. L Smith #1-A
6. Caledonia
7. Lowndes MS
8. 730.0 million cubic feet
9. May 6, 1980
10. Tennessee Gas Pipeline Co

Texas Railroad Commission, Oil and Gas Division

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80-31484/00335
2. 42-483-00000-0000
3. 108 000 000
4. Morgas
5. George B#2 26391
6. East Panhandle
7. Wheeler TX
8. .4 million cubic feet
9. May 7, 1980
10. Transwestern Pipeline Co

1. 80-31485/00336
2. 42-483-00000-0000
3. 108 000 000
4. Morgas
5. Coates #1 26703
6. East Panhandle
7. Wheeler TX
8. 1.1 million cubic feet
9. May 7, 1980
10. Transwestern Pipeline Co

1. 80-31486/00338
2. 42-483-00000-0000
3. 108 000 000
4. Morgas
5. George A #1 26705
6. East Panhandle
7. Wheeler TX
8. 12.1 million cubic feet
9. May 7, 1980
10. Transwestern Pipeline Co

1. 80-31487/00339
2. 42-483-00000-0000
3. 108 000 000
4. Morgas
5. George C #1 26706
6. East Panhandle
7. Wheeler TX
8. 4.4 million cubic feet
9. May 7, 1980
10. Transwestern Pipeline Co

1. 80-31488/00470
2. 42-203-00000-0000
3. 108 000 000
4. The Maurice L Brown Co
5. Kranson-Green Gas Unit #1
6. Bethany-Pettit
7. Harrison TX
8. 19.0 million cubic feet
9. May 7, 1980
10. United Gas Pipeline Co

1. 80-31489/00602
2. 42-483-00000-0000
3. 103 000 000
4. Amarex Inc
5. Rogers Unit #1
6. Wheeler-Pan (Hunton)
7. Wheeler TX
8. 1427.9 million cubic feet
9. May 7, 1980
10. Arkansas Louisiana Gas Co

1. 80-31490/00920
2. 42-179-00000-0000
3. 108 000 000
4. F A Alvey
5. Gethin BI 25898
6. Panhandle East District 10
7. Gray TX
8. 11.1 million cubic feet
9. May 7, 1980
10. Cities Service Co, Coltexo

1. 80-31491/00921
2. 42-179-00000-0000
3. 108 000 000
4. F A Alvey
5. Gethin #2 25897
6. Panhandle East District 10
7. Gray TX
8. 8.9 million cubic feet
9. May 7, 1980
10. Coltexo Corp

1. 80-31492/01353
2. 42-079-30857-0000
3. 103 000 000
4. Sun Oil Co
5. League 91 Project No 129
6. Slaughter (Slaughter Plant)
7. Cochran TX
8. 7.0 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co, Amoco Production Company

1. 80-31493/01385
2. 42-105-31681-0000
3. 103 000 000
4. American Petrofina Co of Texas
5. Baggett C No 3
6. Baggett (Clearfork)
7. Crockett TX
8. 32.0 million cubic feet
9. May 7, 1980
10. Northern Natural Gas Co

1. 80-31494/01917
2. 42-481-31525-0000
3. 102 103 000
4. Vanderbilt Resources Corp
5. Stockton No 1
6. Stockton (Catahoula)
7. Wharton TX
8. 73.0 million cubic feet
9. May 7, 1980
10. Tennessee Gas Pipeline Co

1. 80-31495/01988
2. 42-211-00000-0000
3. 108 000 000
4. Anadarko Production Co
5. Macias A No 1-25
6. Hemphill GW
7. Hemphill TX
8. 5.7 million cubic feet
9. May 7, 1980
10. Panhandle Eastern Pipeline Co

1. 80-31496/02089
2. 42-221-00000-0000
3. 102 000 000
4. UV Industries Inc
5. Seale No 1
6. Bratten Ranch Strawn & Marble Falls
7. Hood TX
8. 21.9 million cubic feet
9. May 7, 1980
10.

1. 80-31497/02151
2. 42-123-00000-0000
3. 103 000 000
4. Varn Petroleum Co
5. Wuest No 1
6. Thomaston Field
7. Dewitt TX
8. 110.0 million cubic feet
9. May 7, 1980
10. Transcontinental Gas Pipeline Corp

1. 80-31498/02207
2. 42-003-00000-0000
3. 108 000 000
4. Adobe Oil & Gas Corp
5. Cowden B No 2
6. North Goldsmith (San Andres Consolidated)
7. Andrews TX
8. 11.8 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31499/02285
2. 42-497-31212-0000
3. 102 000 000
4. Mitchell Energy Corp
5. Winford Carter A #1 76794
6. Boonesville Bend Conglomerate
7. Wise TX
8. 263.0 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America

1. 80-31500/-02317
2. 42-461-31219-0000
3. 103 000 000
4. Gulf Oil Corp
5. Crier—McElroy No 302
6. McElroy
7. Upton TX
8. 2.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31501/02321
2. 42-461-31222-0000
3. 103 000 000
4. Gulf Oil Corp

5. Crier—McElroy No 307
6. McElroy
7. Upton TX
8. 4.7 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31502/02333
2. 42–461–31245–0000
3. 103 000 000
4. Gulf Oil Corp
5. McElroy Cons No 1 M–1022
6. McElroy
7. Upton TX
8. .5 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31503/02337
2. 42–461–31180–0000
3. 103 000 000
4. Gulf Oil Corp
5. J T McElroy Cons No 998
6. McElroy
7. Upton TX
8. .8 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31504/02377
2. 42–461–31170–0000
3. 103 000 000
4. Gulf Oil Corp
5. J T McElroy Cons No 995
6. McElroy
7. Upton TX
8. 12.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31505/02381
2. 42–461–31182–0000
3. 103 000 000
4. Gulf Oil Corp
5. J T McElroy Cons No 1000
6. McElroy
7. Upton TX
8. .6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31506/02385
2. 42–461–31190–0000
3. 103 000 000
4. Gulf Oil Corp
5. J T McElroy Cons No 1004
6. McElroy
7. Upton TX
8. 1.2 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31507/02733
2. 42–065–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Jordan D No 22
6. Panhandle—West
7. Carson TX
8. .8 million cubic feet
9. May 7, 1980
10. Cabot Corp
1. 80–31508/02887
2. 42–427–05128–0000
3. 108 000 000
4. Energy Reserves Group Inc
5. Groos National Bank =3-L
6. S. Gregg Wood
7. Starr TX
8. 1.0 million cubic feet
9. May 7, 1980
10. South Texas Natural Gas Gathering Co
1. 80–31509/02888
2. 42–427–03069–0000
3. 108 000 000
4. Energy Reserves Group Inc
5. Groos National Bank #1
6. Gregg Wood
7. Starr TX
8. 1.0 million cubic feet
9. May 7, 1980
10. South Texas Natural Gas Gathering Co
1. 80–31510/02918
2. 42–237–00000–0000
3. 108 000 000
4. Miles Production Co
5. J B Whitaker #1 21578
6. East Perrin (CADDO)
7. Jack TX
8. 9.0 million cubic feet
9. May 7, 1980
10. Southwestern Gas Pipeline Inc
1. 80–31511/03006
2. 42–355–30535–0000
3. 108 000 000
4. Energy Reserves Group Inc
5. Thompson Gas Unit 23 #2T
6. East Riverside
7. Nueces TX
8. 11.0 million cubic feet
9. May 7, 1980
10. Tennessee Gas Pipeline Co
1. 80–31512/03043
2. 42–133–30352–0000
3. 108 000 000
4. Transierra Exploration Corp
5. Plowman #3 Lease No 75530
6. Eastland County Regular (Gas)
7. Eastland TX
8. .0 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co
1. 80–31513/03073
2. 42–391–00000–0000
3. 103 000 000
4. Texas Oil & Gas Corp
5. Marberry A Well #6
6. McFaddin (Greta Stringer)
7. Refugio TX
8. 128.0 million cubic feet
9. May 7, 1980
10. United Gas Pipeline Co
1. 80–31514/03160
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Whittenburg 62 No 12
6. Panhandle Hutchinson
7. Hutchinson TX
8. .7 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co
1. 80–31515/03174
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Whittenburg No 18
6. Panhandle Hutchinson
7. Hutchinson TX
8. .1 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co
1. 80–31516/03391
2. 42–065–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cooper Olive No 2
6. Panhandle Carson
7. Carson TX
8. .2 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31517/03401
2. 42–065–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cooper Olive No 1
6. Panhandle Carson
7. Carson TX
8. .5 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31518/03424
2. 42–065–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Cooper Olive No 4
6. Panhandle Carson
7. Carson TX
8. .6 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31519/03512
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. J J Perkins C #2-D
6. Panhandle—Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31520/03513
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. J J Perkins C 3-D (01762–3)
6. Panhandle—Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31521/03515
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. J J Perkins #5 Lease #01762
6. Panhandle—Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31522/03516
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. J J Perkins C. #4-D
6. Panhandle—Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31523/03517
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. Gulf Whittenburg #2—Lease 02271
6. Panhandle—Hutchinson
7. Hutchinson TX
8. .0 million cubic feet

9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31524/03518
2. 42–233–00000–0000
3. 108 000 000
4. Rogatz & Glass
5. Gulf Whittenburg #1—Lease 02271
6. Panhandle—Hutchinson
7. Hutchinson TX
8. .0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31525/03678
2. 42–135–03166–0000
3. 108 000 000
4. Phillips Petroleum Company
5. Goldsmith Andector Unit J–7 (21193)
6. Goldsmith (Clearfork)
7. Ector TX
8. 1.5 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co
1. 80–31526/03682
2. 42–135–00388–0000
3. 108 000 000
4. Phillips Petroleum Co
5. G S Andector Unit H–19 (21193)
6. Goldsmith (Clearfork)
7. Ector TX
8. 10.7 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co
1. 80–31527/03692
2. 42–481–31468–0000
3. 102 000 000
4. Eaton Operating Co
5. North Unit No 1–75988
6. Bonus N (Wilcox) Field
7. Wharton TX
8. 400.0 million cubic feet
9. May 7, 1980
10. Trunkline Gas Co
1. 80–31528/03753
2. 42–215–00000–0000
3. 103 000 000
4. Forest Oil Corp
5. A A McAllen No 16 RRC ID #74826
6. McAllen Ranch Field
7. Hidalgo TX
8. 341.0 million cubic feet
9. May 7, 1980
10. Lo-Vaca Gathering Co, Channel Industries Gas Co
1. 80–31529/03770
2. 42–135–02440–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Alma No 7 (06960)
6. TXL (Ellenburger)
7. Ector TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Shell Oil Co
1. 80–31530/03930
2. 42–185–30059–0000
3. 102 000 000
4. Cashco Energy Corp
5. F I Johnson No 4
6. Hill (Woodbine)
7. Grimes TX
8. 150.0 million cubic feet
9. May 7, 1980
10. Armour Pipe Line Co
1. 80–31531/03944
2. 42–025–00000–0000
3. 108 000 000
4. Reserve Oil Inc.
5. Edler #22 RRC #74607
6. Yougeen
7. Bee TX
8. 3.6 million cubic feet
9. May 7, 1980
10. United Gas Pipeline Co
1. 80–31532/03991
2. 42–427–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Eloy No 3
6. Kelsey South
7. Starr TX
8. 5.5 million cubic feet
9. May 7, 1980
10. Sun Oil Co
1. 80–31533/04005
2. 42–135–06441–0000
3. 108 000 000
4. Phillips Petroleum Co
5. North Penwell Unit 97 (21556)
6. Penwell
7. Ector, TX
8. .4 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co
1. 80–31534/04022
2. 42–475–30993–0000
3. 102 000 000
4. Monsanto Co
5. Rodgers #1 #75102
6. Rodgers (Ellenburger)
7. Ward County, TX
8. 1058.0 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America
1. 80–31535/04086
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. C P Davis #1 10029
6. Alvord (Atoka Cong)
7. Wise, TX
8. 2.2 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America
1. 80–31536/04080
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. Thomas Hodges #1 42002
6. Boonsville Bend Cong
7. Wise, TX
8. 2.3 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America
1. 80–31537/04100
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. D P Everett #1 21159
6. Alvord (Caddo Congl)
7. Wise TX
8. 3.9 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America
1. 80–31537/04104
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. W W Hollingsworth #1 28676
6. Boonsville Bend Cong
7. Wise, TX
8. 7.3 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America
1. 80–31539/04108
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. W R Hipp #1 68368
6. Whitehall (Caddo Cong)
7. Wise, TX
8. 3.1 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America
1. 80–31540/04125
2. 42–237–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. Ornee Stewart #2 28817
6. Boonsville Bend Cong
7. Jack, TX
8. 4.9 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America
1. 80–31541/04242
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. J D Evans #2 12967
6. Tidwell (Strawn 4600)
7. Wise, TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America
1. 80–31542/04255
2. 42–357–00000–0000
3. 108 000 000
4. Texaco Inc
5. W C Hernden C #1
6. Dude Wilson
7. Ochiltree, TX
8. 2.5 million cubic feet
9. May 7, 1980
10. Transwestern Pipeline Co
1. 80–31543/04256
2. 42–179–00000–0000
3. 108 000 000
4. Texaco Inc
5. McLarty Lester A #1
6. Panhandle East
7. Gray, TX
8. 6.9 million cubic feet
9. May 7, 1980
10. Coltexo Corp
1. 80–31544/04272
2. 42–179–00000–0000
3. 108 000 000
4. Texaco Inc
5. McLarty Lester B #15
6. Panhandle East
7. Gray, TX
8. 13.9 million cubic feet
9. May 7, 1980
10. Coltexo Corp
1. 80–31545/04435
2. 42–003–10498–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Bitler No 60 (17015)
6. Fullerton
7. Andrews, TX
8. .2 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co
1. 80–31546/04478

2. 42–135–04592–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Slat No 3 (18184)
6. TXL (Central Waddell)
7. Ector, TX
8. 9.2 million cubic feet
9. May 7, 1980
10. Shell Oil Co

1. 80–31547/04741
2. 42–479–00000–0000
3. 108 000 000
4. Fremont Energy Corp
5. T S Scibienski (T–2–1) 74276
6. La Cruz (Olmos)
7. Webb, TX
8. 7.1 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80–31548/04763
2. 42–103–31934–0000
3. 103 000 000
4. Warren Pet Co Div/Gulf Oil Corp
5. P J Lea et al =83
6. Lea (San Andres)
7. Crane, TX
8. 44.0 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co

1. 80–31549/04742
2. 42–479–00000–0000
3. 108 000 000
4. Fremont Energy Corp
5. RO & G Delores 1 60956
6. La Cruz (Olmos)
7. Webb, TX
8. 4.7 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80–31550/04770
2. 42–479–00000–0000
3. 108 000 000
4. Fremont Energy Corp
5. Rosa De Benavides =1 55649
6. La Cruz (Olmos)
7. Webb, TX
8. 7.4 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80–31551/04771
2. 42–479–00000–0000
3. 108 000 000
4. Fremont Energy Corp
5. Rosa De Benavides =2 55651
6. La Cruz (Olmos)
7. Webb, TX
8. 18.6 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80–31552/04840
2. 42–479–00000–0000
3. 108 000 000
4. Fremont Energy Corp
5. Rosa De Benavides =6 56269
6. La Cruz (Olmos)
7. Webb, TX
8. 21.6 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80–31553/04842
2. 42–479–00000–0000
3. 108 000 000
4. Fremont Energy Corp
5. Rosa De Benavides =9 57588
6. La Cruz (Olmos)
7. Webb, TX
8. 2.2 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80–31554/04843
2. 42–479–31782–0000
3. 108 000 000
4. Fremont Energy Corp
5. Rosa De Benavides #12 74864
6. Mesquite (Escondido)
7. Webb, TX
8. 19.5 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80–31555/04902
2. 42–233–00000–0000
3. 108 000 000
4. Superior Well Servicing Co
5. Whittenburg #1 Lease #57375
6. Panhandle
7. Hutchinson, TX
8. .0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31556/04927
2. 42–317–31983–0000
3. 103 000 000
4. Amoco Production Co
5. E L Turnbow Well No 3
6. Breedlove
7. Martin, TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co Northern Natural Gas Co

1. 80–31557/04944
2. 42–371–31862–0000
3. 103 000 000
4. Amoco Production Co
5. Edward Dickinson II A 7
6. Pecos Valley/Devonian 5400
7. Pecos, TX
8. 34.0 million cubic feet
9. May 7, 1980
10. PGP Gas Products Inc

1. 80–31558/04963
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. T W Womack #2 28857
6. Boonsville Bend Cong
7. Wise, TX
8. 3.1 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America

1. 80–31559/05051
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. Bernice Peek #2 44005
6. Boonsville Bend Cong
7. Wise, TX
8. 13.2 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America

1. 80–31560/05087
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. J W Crawford #1 34722
6. Boonsville Bend Cong
7. Wise, TX
8. 6.6 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America

1. 80–31561/05088
2. 42–497–00000–0000
3. 108 000 000
4. Mitchell Energy Corp
5. J R Lewis #1 35050
6. Boonsville Bend Cong
7. Wise, TX
8. 7.5 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America

1. 80–31562/05115
2. 42–079–30519–0000
3. 103 000 000
4. Getty Oil Co
5. C S Dean Unit A No 189
6. Slaughter
7. Cochran, TX
8. 6.0 million cubic feet
9. May 7, 1980
10. Amoco Production Co

1. 80–31563/05117
2. 42–079–30521–0000
3. 103 000 000
4. Getty Oil Co
5. C S Dean Unit A No 187
6. Slaughter
7. Cochran TX
8. 40.0 million cubic feet
9. May 7, 1980
10. Amoco Production Co

1. 80–31564/05119
2. 42–079–30522–0000
3. 103 000 000
4. Getty Oil Co
5. C S Dean Unit A No 185
6. Slaughter
7. Cochran TX
8. 45.0 million cubic feet
9. May 7, 1980
10. Amoco Production Co

1. 80–31565/05138
2. 42–079–30520–0000
3. 103 000 000
4. Getty Oil Co
5. C S Dean Unit A No 188
6. Slaughter
7. Cochran TX
8. 35.0 million cubic feet
9. May 7, 1980
10. Amoco Production Co

1. 80–31566/05139
2. 42–079–30518–0000
3. 103 000 000
4. Getty Oil Co
5. C S Dean Unit A No 190
6. Slaughter
7. Cochran TX
8. 6.0 million cubic feet
9. May 7, 1980
10. Amoco Production Co

1. 80–31567/05141
2. 42–079–30977–0000
3. 103 000 000
4. Getty Oil Co
5. C S Dean Unit A No 193
6. Slaughter
7. Cochran TX
8. 12.0 million cubic feet
9. May 7, 1980
10. Amoco Production Co

1. 80–31568/05142
2. 42–79–30516–0000
3. 103 000 000
4. Getty Oil Co
5. C S Dean Unit A No 192

6. Slaughter
7. Cochran TX
8. 18.0 million cubic feet
9. May 7, 1980
10. Amoco Production Co

1. 80–31569/05527
2. 42–179–00000–0000
3. 108 000 000
4. W L Bruce Oil & Gas Co
5. Merten #12 RRC 00332
6. Panhandle Field
7. Gray TX
8. 1.4 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31570/05529
2. 42–179–00000–0000
3. 108 000 000
4. W L Bruce Oil Co
5. Walberg #7 RRC 00242
6. Panhandle Field
7. Gray TX
8. 1.1 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31571/05541
2. 42–483–30532–0000
3. 103 000 000
4. Chevron USA Inc
5. W W Wheeler #1
6. Mills Ranch
7. Wheeler TX
8. 146.0 million cubic feet
9. May 7, 1980
10. Mississippi River Transmission Corp

1. 80–31572/05558
2. 42–355–31267–0000
3. 102 000 000
4. Sun Oil Co
5. State Tract 424 Well #8
6. Red Fish Bay (Zone 45)
7. Nueces TX
8. 120.0 million cubic feet
9. May 7, 1980
10. United Gas Pipe Line Co

1. 80–31573/05622
2. 42–123–00000–0000
3. 103 000 000
4. Expando Oil Co
5. Egg-Junker No 1 76102
6. Arneckeville (Wilcox A 8150)
7. Dewitt TX
8. 12.0 million cubic feet
9. May 7, 1980
10. Texas Eastern Transmission Corp

1. 80–31574/05725
2. 42–179–00000–0000
3. 108 000 000
4. W L Bruce Co
5. Meers C #12 RRC 00332
6. Panhandle
7. Gray TX
8. 3.4 million cubic feet
9. May 7, 1980
10. Cities Service

1. 80–31575/05987
2. 42–135–30544–0000
3. 103 000 000
4. Conoco Inc
5. West Flowers Unit (11787) #60
6. Flowers W/Canyon Sand
7. Stonewall TX
8. .7 million cubic feet
9. May 7, 1980
10. Cities Service Co

1. 80–31576/06255
2. 42–389–30910–0000
3. 103 000 000
4. Arco Oil & Gas Company
5. R W Hord Well #3
6. Worsham (Cherry Canyon)
7. Reeves TX
8. 175.0 million cubic feet
9. May 7, 1980
10. Transwestern Pipeline Co

1. 80–31577/06867
2. 42–065–00000–0000
3. 108 000 000
4. Natural Gas Pipeline Co of America
5. J C McConnell No B–1–T
6. Panhandle West
7. Carson TX
8. 6.0 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co of America

1. 80–31578/06892
2. 42–483–30465–0000
3. 102 000 000
4. Pennzoil Company
5. Forsman Gas Unit #1—75882
6. Thorndike (Hunton)
7. Wheeler TX
8. 360.0 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31579/06918
2. 42–065–00000–0000
3. 108 000 000
4. Gene Thomas Hudspeth Jr
5. Bryan–A– (00175) No 2
6. Panhandle Carson County
7. Carson TX
8. 16.6 million cubic feet
9. May 7, 1980
10. Cabot Corp

1. 80–31580/07000
2. 42–057–30830–0000
3. 102 000 000
4. The Superior Oil Co
5. Maude B Traylor 10
6. Maude B Traylor N (78)
7. Calhoun TX
8. 250.0 million cubic feet
9. May 7, 1980
10. Lo Vaca Gathering Co

1. 80–31581/07010
2. 42–179–00000–0000
3. 108 000 000
4. Petro-Search Inc
5. Read #15 (1–090–02709–3)
6. Panhandle
7. Gray TX
8. 7.5 million cubic feet
9. May 7, 1980
10. Dorchester Gas Producing Co

1. 80–31582/07015
2. 42–495–00000–0000
3. 108 000 000
4. Amerada Hess Corp
5. J B Walton #1
6. Kermit
7. Winkler TX
8. 16.8 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31583/07071
2. 42–375–00000–0000
3. 108 000 000
4. Pioneer Production Corp
5. Bivins D #6 35003
6. West Panhandle
7. Potter TX
8. 9.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31584/07162
2. 42–483–00000–0000
3. 108 000 000
4. Beverly M Axelrod
5. D N Massey No 1 26861
6. Panhandle East
7. Wheeler TX
8. 3.0 million cubic feet
9. May 7, 1980
10. Warren Petroleum Corp

1. 80–31585/07165
2. 42–483–00000–0000
3. 108 000 000
4. Kenneth M Axelrod
5. W Hatcher No 5 26973
6. Panhandle East
7. Wheeler TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Warren Petroleum Corp

1. 80–31586/07167
2. 42–483–00000–0000
3. 108 000 000
4. Kenneth M Axelrod
5. Gooch No 1 26963
6. Panhandle East
7. Wheeler TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Warren Petroleum Corp

1. 80–31587/07176
2. 42–483–00000–0000
3. 108 000 000
4. Kenneth M Axelrod
5. A N Williams No 1 26449
6. Panhandle East
7. Wheeler TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31588/07179
2. 42–483–00000–0000
3. 108 000 000
4. Beverly M Axelrod
5. E F Bell No 1 26819
6. Panhandle East
7. Wheeler TX
8. 7.0 million cubic feet
9. May 7, 1980
10. Warren Petroleum Corp

1. 80–31589/07241
2. 42–341–00000–0000
3. 108 000 000
4. W L Bruce Co
5. Morton #10 RRC 02364
6. Panhandle
7. Moore TX
8. 11.2 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31590/07328
2. 42–365–00000–0000
3. 108 000 000
4. Getty Oil Co
5. Carroll A No 1 #32015
6. Carthage (Paluxy)
7. Panola TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Texas Gas Transmission Corp

1. 80–31591/07333
2. 42–365–00000–0000
3. 103 000 000
4. Getty Oil Co
5. J D Brasher No 2 ID =73536
6. Carthage (Cotton Valley)
7. Panola TX
8. 150.0 million cubic feet
9. May 7, 1980
10. United Gas Pipeline Co

1. 80–31592/07356
2. 42–233–00000–0000
3. 108 000 000
4. Cal-Tex Oil Company
5. Carver-C (02730) No 3
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 2.2 million cubic feet
9. May 7, 1980
10. Diamond Shamrock Corp

1. 80–31593/07362
2. 42–233–00000–0000
3. 108 000 000
4. Cal-Tex Oil Co
5. W. A. Carver (25453) Well No. 1
6. Panhandle West
7. Hutchinson, TX
8. 20.1 million cubic feet
9. May 7, 1980
10. Diamond Shamrock Corp

1. 80–31594/07397
2. 42–233–00000–0000
3. 108 000 000
4. Cal-Tex Oil Co
5. Lucas (01111) No. 4
6. Panhandle Hutchinson County
7. Hutchinson, TX
8. 3.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31595/07409
2. 42–233–00000–0000
3. 108 000 000
4. Cal-Tex Oil Co
5. Carver Waterfl Unit No. 2 (00729) No. 1
6. Panhandle Hutchinson County
7. Hutchinson, TX
8. 7.3 million cubic feet
9. May 7, 1980
10. Diamond Shamrock Corp

1. 80–31596/07458
2. 42–065–30632–0000
3. 103 000 000
4. Blair Oil Co
5. Burnett Lease No. 1–101
6. Panhandle Carson County
7. Carson, TX
8. 153.3 million cubic feet
9. May 7, 1980
10. Panhandle Eastern Pipe Line Co

1. 80–31597/07458
2. 42–065–30649–0000
3. 103 000 000
4. Blair Oil Co
5. Burnett Lease No. 2–101
6. Panhandle-Carson County
7. Carson, TX
8. 34.7 million cubic feet
9. May 7, 1980
10. Panhandle Eastern Pipe Line Co

1. 80–31598/07459
2. 42–065–30587–0000
3. 103 000 000
4. Blair Oil Co
5. Burnett Lease No. 2–83
6. Panhandle-Carson County
7. Carson, TX
8. 102.2 million cubic feet
9. May 7, 1980
10. Panhandle Eastern Pipe Line Co

1. 80–31599/07515
2. 42–505–30556–0000
3. 103 000 000
4. Gulf Oil Corporation
5. G. Martinez No. 3 RRC No. 72013
6. J. C. Martin (LOBO)
7. Zapata, TX
8. 20.0 million cubic feet
9. May 7, 1980
10. Tennessee Gas Pipeline Co

1. 80–31600/07602
2. 42–283–30642–0000
3. 102 000 000
4. Mormac Oil & Gas Co
5. C. N. Cooke B No. 3
6. Cooke (Wilcox 4100 West)
7. LaSalle, TX
8. 55.0 million cubic feet
9. May 7, 1980
10. Transcontinental Gas Pipeline Corp

1. 80–31601/07617
2. 42–427–32440–0000
3. 108 000 000
4. Fischer Petroleum Corp
5. Garza B–3
6. Ross North (2490)
7. Starr, TX
8. 10.8 million cubic feet
9. May 7, 1980
10. Tennessee Gas Pipeline Co

1. 80–31602/08058
2. 42–219–30280–0000
3. 102 000 000
4. Amoco Production Co
5. Slaughter G No. 51
6. Sundown (CISCO)
7. Hockley, TX
8. 1.2 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co

1. 80–31603/08070
2. 42–203–30280–0000
3. 102 000 000
4. Amoco Production Co
5. Shaw Gas Unit No. 2
6. Blocker (Cotton Valley)
7. Harrison, TX
8. 95.2 million cubic feet
9. May 7, 1980
10. Delhi Gas Pipeline Corp

1. 80–31604/08096
2. 42–179–31966–0000
3. 108 000 000
4. Travelers Oil Co G-V Project
5. Saunders No. 1
6. East Panhandle
7. Gray, TX
8. 9.1 million cubic feet
9. May 7, 1980
10. Coltexo Corp

1. 80–31605/08361
2. 42–479–31948–0000
3. 102 000 000
4. Houston Oil & Minerals Corp
5. Floyd Billings A No. 4
6. Lopez West (Queen City)
7. Webb, TX
8. 2993.0 million cubic feet
9. May 7, 1980
10. Lovaca Gathering Co

1. 80–31606/08362
2. 42–479–31966–0000
3. 102 000 000
4. Houston Oil & Minerals Corp
5. Floyd Billings A No. 5–C
6. Lopez West (Queen City Upper)
7. Webb, TX
8. 438.0 million cubic feet
9. May 7, 1980
10. Lovaco Gathering Co

1. 80–31607/08374
2. 42–295–30511–0000
3. 103 000 000
4. Jack G Jones
5. Schwab No. 1 75709
6. Darren (Morrow Lower)
7. Lipscomb, TX
8. 375.0 million cubic feet
9. May 7, 1980
10. Transwestern Pipeline Co

1. 80–31608/08442
2. 42–383–31289–0000
3. 103 000 000
4. Saxon Oil Co
5. University 16–58 No. 2
6. Spraberry (Trend Area)
7. Reagan County, TX
8. 11.0 million cubic feet
9. May 7, 1980
10. Northern Natural Gas Co

1. 80–31609/08526
2. 42–135–32977–0000
3. 103 000 000
4. Petroleum Technical Services Co
5. E. F. Cowden F No. 2
6. Foster
7. Ector, TX
8. 16.4 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31610/08630
2. 42–003–00000–0000
3. 108 000 000
4. B & B Production
5. Cowden A No. 1
6. East Goldsmith (Grayburg)
7. Andrews, TX
8. 1.2 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31611/08648
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. Guleke No. 7
6. Panhandle
7. Moore, TX
8. 25.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31612/08661
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. T. G. Smith No. 12
6. Panhandle
7. Moore, TX
8. 16.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31613/08662
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. T. G. Smith No. 13

6. Panhandle
7. Moore, TX
8. 16.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31614/08664
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. Guleke No. 4
6. Panhandle
7. Moore, TX
8. 24.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31615/08665
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. Guleke No. 3
6. Panhandle
7. Moore, TX
8. 24.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31616/08670
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. Ware No. 6
6. Panhandle
7. Moore, TX
8. 11.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31617/08671
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. Ware No. 5
6. Panhandle
7. Moore, TX
8. 11.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31618/08672
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. Ware No. 4
6. Panhandle
7. Moore, TX
8. 11.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31619/08673
2. 42–341–00000–0000
3. 108 000 000
4. Concho Oil Co
5. Ware No. 3
6. Panhandle
7. Moore, TX
8. 12.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31620/08676
2. 42–233–00000–0000
3. 108 000 000
4. DCW Production
5. Burnett K No. 4
6. Panhandle
7. Hutchinson, TX
8. 11.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31621/08677
2. 42–233–00000–0000
3. 108 000 000
4. DCW Production
5. Burnett K No. 5
6. Panhandle
7. Hutchinson, Tx
8. 11.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31622/08682
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. J. F. Weatherly A No. 6
6. Panhandle
7. Hutchinson, TX
8. 29.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31623/08683
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. J F Weatherly A #8
6. Panhandle
7. Hutchinson TX
8. 29.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31624/08690
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. J F Weatherly A #4
6. Panhandle
7. Hutchinson TX
8. 29.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31625/08699
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. Burnett I #1
6. Panhandle
7. Hutchinson TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31626/08700
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. McCarty #10
6. Panhandle
7. Hutchinson TX
8. 13.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31627/08702
2. 42–233–00000–0000
3. 108 000 000
4. Detra Producing Co
5. McCarty #8
6. Panhandle
7. Hutchinson TX
8. 13.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31628/08732
2. 42–427–00000–0000
3. 108 000 000
4. Huisache Operating Co
5. J F B Heard #3 #62155
6. Rincon North (4100)
7. Starr County TX
8. 12.8 million cubic feet
9. May 7, 1980
10. Lovaca Gathering Co

1. 80–31629/08734
2. 42–233–00000–0000
3. 108 000 000
4. Jay-Dee Producing Co
5. J A Whittenburg #2
6. Panhandle
7. Hutchinson TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31630/08735
2. 42–233–00000–0000
3. 108 000 000
4. Jay-Dee Producing Co
5. J A Whittenburg #3
6. Panhandle
7. Hutchinson TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31631/08736
2. 42–233–00000–0000
3. 108 000 000
4. Jay-Dee Producing Co
5. J A Whittenburg #4
6. Panhandle
7. Hutchinson TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31632/08738
2. 42–065–00000–0000
3. 108 000 000
4. Jay-Dee Producing Co
5. Four Sixes #2
6. Panhandle
7. Carson TX
8. 17.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31633/08739
2. 42–233–00000–0000
3. 108 000 000
4. Jay-Dee Producing Co
5. Four Sixes #1
6. Panhandle
7. Carson, TX
8. 17.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31634/08741
2. 42–233–00000–0000
3. 108 000 000
4. Jay-Dee Producing Co
5. Whittenburg A #7
6. Panhandle
7. Hutchinson TX
8. 2.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31635/08742
2. 42–233–00000–0000
3. 108 000 000
4. Jay-Dee Producing Co
5. Whittenburg A #6
6. Panhandle
7. Hutchinson TX
8. 2.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31636/08743
2. 42-233-00000-0000
3. 108 000 000
4. Jay-Dee Producing Co
5. Whittenburg A =5
6. Panhandle
7. Hutchinson TX
8. 2.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31637/08748
2. 42-233-00000-0000
3. 108 000 000
4. Jay-Dee Producing Co
5. Turner Smith =4
6. Panhandle
7. Hutchinson TX
8. 14.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31638/08749
2. 42-233-00000-0000
3. 108 000 000
4. Jay-Dee Producing Co
5. Turner Smith =3
6. Panhandle
7. Hutchinson TX
8. 15.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31639/08777
2. 42-179-00000-0000
3. 108 000 000
4. J W Snider
5. Johnson Estate 1-176
6. Panhandle-Gray County
7. Gray TX
8. 4.9 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80-31640/08812
2. 42-165-31208-0000
3. 108 000 000
4. Samedan Oil Corp
5. Andrews A No 5
6. Robertson (SA)
7. Gaines TX
8. 2.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31641/08842
2. 42-495-00000-0000
3. 108 000 000
4. Walsh & Watts Inc
5. Colby =2 03202
6. Kermit
7. Winkler TX
8. 78.0 million cubic feet
9. May 7, 1980
10. Cabot Corp

1. 80-31642/08852
2. 42-495-00000-0000
3. 108 000 000
4. Walsh & Watts Inc
5. Colby =25 03202
6. Kermit
7. Winkler TX
8. 78.0 million cubic feet
9. May 7, 1980
10. Cabot Corp

1. 80-31643/08863
2. 42-233-00000-0000
3. 108 000 000
4. Walsh & Watts Inc
5. Kingsland F =5 00975
6. Panhandle
7. Hutchinson TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31644/08897
2. 42-479-30610-0000
3. 108 000 000
4. W B Yarborough
5. Palafox #1-298 #70211
6. Santo Tomas (Escondido)
7. Webb County TX
8. 8.4 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80-31645/09105
2. 42-175-00000-0000
3. 102 000 000
4. Killam & Hurd Ltd
5. A Wendel #1 ID #79956
6. Schroeder (FRIO 2830) Field
7. Goliad TX
8. 100.0 million cubic feet
9. May 7, 1980
10.

1. 80-31646/09138
2. 42-103-31928-0000
3. 103 000 000
4. Warren Pet Co Div/ Gulf Oil Corp
5. P J Lea et al #78
6. Lea (San Andres)
7. Crane TX
8. 37.0 million cubic feet
9. May 7, 1980
10.El paso Natural Gas Co

1. 80-31647/09160
2. 42-123-30772-0000
3. 102 000 000
4. Monsanto Co
5. Alves #1
6. Henze (Wilcox 12300)
7. Dewitt TX
8. 540.0 million cubic feet
9. May 7, 1980
10. Texas Eastern Transmission Corp

1. 80-31648/09194
2. 42-483-30588-0000
3. 102 000 000
4. CIG Exploration Inc
5. Zybach 1-11
6. Zybach Morrow A
7. Wheeler TX
8. 210.0 million cubic feet
9. May 7, 1980
10. Colorado Interstate Gas Co
Pioneer Natural Gas Co

1. 80-31649/09418
2. 42-603-30119-0000
3. 102 000 000
4. The Superior Oil Co
5. State of Texas 582-S Gas Unit 4-U
6. Matagorda Island Blk 582-S (35)
7. Offshore Matagorda TX
8. 196.0 million cubic feet
9. May 7, 1980
10. United Texas Transmission

1. 80-31650/09420
2. 42-239-31286-0000
3. 102 000 000
4. The Superior Oil Co
5. Dorothy Ploeger 7
6. Foss Brown (3300)
7. Lavaca TX
8. 175.0 million cubic feet
9. May 7, 1980
10. United Texas Transmission

1. 80-31651/09745
2. 42-371-32668-0000
3. 102 000 000
4. Zinke & Philpy Inc
5. Grant State No 1 80083
6. Di-Mar (Devonian) Field
7. Pecos TX
8. 182.5 million cubic feet
9. May 7, 1980
10. El Paso Natural Gas Co

1. 80-31652/09651
2. 42-179-00000-0000
3. 108 000 000
4. Mobil Oil Corp
5. Tom Catlin #7
6. Panhandle
7. Gray TX
8. 1.3 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31653/09689
2. 42-401-30778-0000
3. 102 000 000
4. The Long Trusts
5. Holt Rene E et al #1
6. Dirgin (Cotton Valley)
7. Rusk TX
8. 180.0 million cubic feet
9. May 7, 1980
10. Arkansas Louisiana Gas Co

1. 80-31654/09759
2. 42-135-00000-0000
3. 108 000 000
4. American Petrofina Co of Texas
5. R B Cowden #1
6. Goldsmith North (San Andres Consolidate)
7. Ector TX
8. 2.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31655/09763
2. 42-003-00000-0000
3. 108 000 000
4. American Petrofina Co of Texas
5. University 5600 #1
6. Embar 5600 #1
7. Andrews TX
8. 8.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31656/09767
2. 42-135-00000-0000
3. 108 000 000
4. American Petrofina Co of Texas
5. R B Cowden #6
6. Goldsmith N (San Andres Consolidate)
7. Ector TX
8. 2.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31657/09785
2. 42-135-00000-0000
3. 108 000 000
4. American Petrofina Co of Texas
5. R B Cowden H #4
6. Goldsmith 5600
7. Ector TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80-31658/09786
2. 42-135-00000-0000
3. 108 000 000

4. American Petrofina Co of Texas
5. R B Cowden H #3
6. Goldsmith 5600
7. Ector TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31659/09803
2. 42–065–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Cooper #1
6. Panhandle
7. Carson TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31660/09804
2. 42–065–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Cooper #2
6. Panhandle
7. Carson TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31661/09805
2. 42–065–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Cooper #3
6. Panhandle
7. Carson TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31662/09806
2. 42–065–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Cooper #4
6. Panhandle
7. Carson TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31663/09807
2. 42–065–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Cooper #5
6. Panhandle
7. Carson TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31664/09808
2. 42–065–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Cooper #6
6. Panhandle
7. Carson TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31665/09809
2. 42–065–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Cooper #7
6. Panhandle
7. Carson TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31666/09810
2. 42–065–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Cooper #8
6. Panhandle
7. Carson TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31667/09811
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #1
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31668/09812
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #2
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31669/09813
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #3
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31670/09818
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #9
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31671/09819
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #10
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31672/09820
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #11
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31673/09821
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #12
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31674/09822
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #13
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31675/09823
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #15
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31676/09824
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #16
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31677/09825
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #17
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31678/09826
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Benny #18
6. Panhandle
7. Gray TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Pioneer Natural Gas Co

1. 80–31679/09828
2. 42–233–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Lewis #4
6. Panhandle
7. Hutchinson TX
8. .8 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31680/09830
2. 42–233–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Lewis #13
6. Panhandle
7. Hutchinson TX

8. .8 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31681/09831
2. 42–233–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Moore =1
6. Panhandle
7. Hutchinson TX
8. 2.4 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31682/09832
2. 42–233–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Moore =3
6. Panhandle
7. Hutchinson TX
8. 2.4 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31683/09833
2. 42–233–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Moore =5
6. Panhandle
7. Hutchinson TX
8. 2.4 million cubic feet
9. May 7, 1980
10 Getty Oil Co

1. 80–31684/09834
2. 42–233–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Moore =6
6. Panhandle
7. Hutchinson TX
8. 2.4 million cubic feet
9. May 7, 1980
10 Getty Oil Co

1. 80–31685/09835
2. 42–233–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Moore =7
6. Panhandle
7. Hutchinson TX
8. 2.4 million cubic feet
9. May 7, 1980
10 Getty Oil Co

1. 80–31686/09836
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Andy =1
6. Panhandle
7. Gray TX
8. 2.4 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31687/09843
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Andy =8
6. Panhandle
7. Gray TX
8. 2.4 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31688/09847
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Major #2
6. Panhandle
7. Gray TX
8. .2 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31689/09851
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Major #7
6. Panhandle
7. Gray TX
8. .2 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31690/09852
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Major #8
6. Panhandle
7. Gray TX
8. .2 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31691/09854
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Beavers #1
6. Panhandle
7. Gray TX
8. .4 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31692/09856
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Beavers #4
6. Panhandle
7. Gray TX
8. .4 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31693/09857
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Beavers #5
6. Panhandle
7. Gray TX
8. .4 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31694/09858
2. 42–179–00000–0000
3. 108 000 000
4. Sage Petroleum Co
5. Beavers #6
6. Panhandle
7. Gray TX
8. .4 million cubic feet
9. May 7, 1980
10 Pioneer Natural Gas Co

1. 80–31695/09895
2. 42–195–00000–0000
3. 108 000 000
4. Texaco Inc.
5. C C Oloughlin Sr Trust #2–U
6. Twin (Des Moines)
7. Hansford TX
8. 3.4 million cubic feet
9. May 7, 1980
10 Northern Natural Gas Co

1. 80–31696/09810
2. 42–179–00000–0000
3. 108 000 000
4. Texaco Inc
5. H M Davis #11
6. Panhandle
7. Gray TX
8. 2.3 million cubic feet
9. May 7, 1980
10 Phillips Petroleum Co

1. 80–31697/09914
2. 42–233–00000–0000
3. 108 000 000
4. Texaco Inc
5. S B Bennett N CT–5 #18
6. Panhandle
7. Hutchinson TX
8. 7.7 million cubic feet
9. May 7, 1980
10 Phillips Petroleum Co

1. 80–31698/09917
2. 42–389–00000–0000
3. 108 000 000
4. Texaco Inc
5. Reeves P Fee #8
6. Screwbran Northeast (Delaware)
7. Reeves TX
8. 2.5 million cubic feet
9. May 7, 1980
10 Continental Oil Co

1. 80–31699/09920
2. 42–135–00000–0000
3. 108 000 000
4. Texaco Inc
5. A E Thomas A NCT–1 #31
6. TXL (San Andres)
7. Ector TX
8. 7.8 million cubic feet
9. May 7, 1980
10 El Paso Natural Gas Co

1. 80–31700/09923
2. 42–357–00000–0000
3. 108 000 000
4. Texaco Inc
5. G M Cooper NCT–3 #1
6. Spicer
7. Ochiltree TX
8. 8.1 million cubic feet
9. May 7, 1980
10 Phillips Petroleum Co

1. 80–31701/09965
2. 42–301–00000–0000
3. 108 000 000
4. Texaco Inc
5. El Mar Delaware Unit No 2312
6. El Mar (Delaware)
7. Loving TX
8. .8 million cubic feet
9. May 7, 1980
10 Phillips Petroleum Co

1. 80–31702/09984
2. 42–233–00000–0000
3. 108 000 000
4. Texaco Inc
5. R L Pond #44
6. Panhandle
7. Hutchinson TX
8. 14.8 million cubic feet
9. May 7, 1980
10 Getty Oil Co

1. 80–31703/10139

2. 42–227–00000–0000
3. 108 000 000
4. Conoco Inc
5. H R Clay A No 54 (18992)
6. Howard/Glassock/Glorieta/
7. Howard TX
8. .4 million cubic feet
9. May 7, 1980
10 Phillips Petroleum Gas Co
1. 80–31704/10189
2. 42–151–00000–0000
3. 108 000 000
4. Conoco Inc
5. Sohio-Coates No 9 (06139)
6. Round Top/Swastika/
7. Fisher TX
8. 4.6 million cubic feet
9. May 7, 1980
10 Lone Star Gas Co
1. 80–31705/10216
2. 42–389–00000–0000
3. 108 000 000
4. Conoco Inc
5. Ford-Geraldine Unit No 21 (21021)
6. Geraldine/Ford/
7. Reeves TX
8. .0 million cubic feet
9. May 7, 1980
10 El Paso Natural Gas Co
1. 80–31706/10264
2. 42–227–00000–0000
3. 108 000 000
4. Conoco Inc
5. H R Clay No 25 (02690)
6. Howard-Glasscock
7. Howard TX
8. .4 million cubic feet
9. May 7, 1980
10 Phillips Pet Co
1. 80–31707/10272
2. 42–433–00000–0000
3. 108 000 000
4. Conoco Inc
5. Guest (Canyon SD) Unit No 40 (10855)
6. Guest (Canyon Sand)
7. Stonewall TX
8. .4 million cubic feet
9. May 7, 1980
10 Cities Service Oil Co
1. 80–31708/10308
2. 42–295–30259–0000
3. 108 000 000
4. Cotton Petroleum Corp
5. Koch No 1
6. Lipscomb (Cleveland)
7. Lipscomb TX
8. 9.5 million cubic feet
9. May 7, 1980
10 Northern Natural Gas Co
1. 80–31709/10322
2. 42–203–00000–0000
3. 108 000 000
4. Huggs Inc
5. Mrs Hattie W Griffin #1 SN 29393
6. Bethany/Pettit
7. Harrison TX
8. 38.0 million cubic feet
9. May 7, 1980
10 United Gas Pipe Line Co
1. 80–31710/10415
2. 42–079–30222–0000
3. 108 000 000
4. United Co
5. Reed Wright B #1 57167
6. Levelland (SA)
7. Cochran TX
8. 18.2 million cubic feet
9. May 7, 1980
10 El Paso Natural Gas Co
1. 80–31711/10419
2. 42–079–00000–0000
3. 108 000 000
4. United Co
5. Marty Wright #31 55631
6. Levelland (SA)
7. Cochran TX
8. 8.2 million cubic feet
9. May 7, 1980
10 El Paso Natural Gas Co
1. 80–31712/10422
2. 42–079–30497–0000
3. 108 000 000
4. United Co
5. Marty Wright #22 76215
6. Levelland (SA)
7. Cochran TX
8. 2.5 million cubic feet
9. May 7, 1980
10 El Paso Natural Gas Co
1. 80–31713/10435
2. 42–409–31196–0000
3. 102 000 000
4. Wainoco Oil & Gas Co
5. J R C Brannon Gas Unit No. 1
6. Brannon (Lower Herron)
7. San Patricio, TX
8. 1033.0 million cubic feet
9. May 7, 1980
10. Texas Eastern Transmission Corp
1. 80–31714/10438
2. 42–233–00000–0000
3. 108 000 000
4. American Petrofina Co of Texas
5. Hedgecoke—Whittenburg No. 32
6. Panhandle
7. Hutchinson, TX
8. 3.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31715/10449
2. 42–065–00000–0000
3. 108 000 000
4. Brian Production
5. B F Block (00076) No. 4
6. Panhandle Carson County
7. Carson, TX
8. .6 million cubic feet
9. May 7, 1980
10. Cabot Corp
1. 80–31716/10451
2. 42–065–00000–0000
3. 108 000 000
4. Brian Production
5. B F Block (00076) No. 3
6. Panhandle Carson County
7. Carson, TX
8. 1.0 million cubic feet
9. May 7, 1980
10. Cabot Corp
1. 80–31717/10507
2. 42–233–00000–0000
3. 108 000 000
4. G C Hermann Co
5. Whittenburg Well No. 3
6. Panhandle
7. Hutchinson, TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31718/10509
2. 42–233–00000–0000
3. 108 000 000
4. G C Hermann Co
5. Whittenburg Well No. 6
6. Panhandle
7. Hutchinson, TX
8. 1.8 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31719/10604
2. 42–179–00000–0000
3. 108 000 000
4. Lefors Petroleum Co Inc
5. GC & HE Saunders No. 1
6. Panhandle
7. Gray, TX
8. .8 million cubic feet
9. May 7, 1980
10. Coltexo Corp
1. 80–31720/10605
2. 42–179–00000–0000
3. 108 000 000
4. Lefors Petroleum Co Inc
5. GC & HE Saunders No. 2
6. Panhandle
7. Gray, TX
8. .7 million cubic feet
9. May 7, 1980
10. Coltexo Corp
1. 80–31721/10670
2. 42–483–00000–0000
3. 108 000 000
4. Roy Production Co
5. Hunter No. 1 01378
6. Panhandle Osborne Area
7. Wheeler, TX
8. 2.8 million cubic feet
9. May 7, 1980
10. Ashland Exploration Inc
1. 80–31722/10671
2. 42–483–00000–0000
3. 108 000 000
4. Roy Production Co
5. Hunter No. 3 01378
6. Panhandle Osborne Area
7. Wheeler, TX
8. 2.8 million cubic feet
9. May 7, 1980
10. Ashland Exploration Inc
1. 80–31723/10672
2. 42–483–00000–0000
3. 108 000 000
4. Roy Production Co
5. Hunter No. 4 01378
6. Panhandle Osborne Area
7. Wheeler, TX
8. 2.8 million cubic feet
9. May 7, 1980
10. Ashland Exploration Inc
1. 80–31724/10771
2. 42–427–31256–0000
3. 102 000 000
4. Shell Oil Co
5. Judd Estate-State No. 6
6. La Copita (Vicksburg X SE) (Propose
7. Starr, TX
8. 300.0 million cubic feet
9. May 7, 1980
10. Tennessee Gas Pipeline Co
1. 80–31725/10774
2. 42–483–00000–0000
3. 108 000 000
4. Stahl Petroleum Co
5. Schlegel No. 1 70680
6. East Panhandle

7. Wheeler, TX
8. 8.4 million cubic feet
9. May 7, 1980
10. Transwestern Pipeline Co, Warren Petroleum Co

1. 80–31726/10776
2. 42–239–31384–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Clements Well No. 1
6. Panhandle Cordele East (3850)
7. Jackson, TX
8. 128.0 million cubic feet
9. May 7, 1980
10.

1. 80–31727/10787
2. 42–383–00004–0000
3. 108 000 000
4. Hanson Corp
5. Monk No. 1
6. Calvin (Dean)
7. Reagan, TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Union Texas Petroleum

1. 80–31728/10805
2. 42–081–30170–0000
3. 108 000 000
4. Pearson-Sibert Oil Co of Texas
5. Millican Reef Unit No. 3-P
6. Millican (Strawn Reef)
7. Coke, TX
8. 6.0 million cubic feet
9. May 7, 1980
10. Sun Oil Co

1. 80–31729/10874
2. 42–179–00000–0000
3. 108 000 000
4. Pipeline Services Inc
5. Colebank No. 3A RRC No. 02500
6. East Panhandle
7. Gray, TX
8. .0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31730/10876
2. 42–179–00000–0000
3. 108 000 000
4. Pipeline Services Inc
5. Colebank No. 1 RRC 26487
6. East Panhandle
7. Gray, TX
8. 9.3 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31731/10878
2. 42–179–00000–0000
3. 108 000 000
4. Pipeline Services Inc
5. Colebank No. 2 RRC No. 02500
6. East Panhandle
7. Gray, TX
8. .0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31732/10976
2. 42–165–31534–0000
3. 103 000 000
4. Exxon Corp
5. Robertson (Clearfork) Unit No. 6102
6. Robertson N (Clearfork 7100)
7. Gaines, TX
8. 40.0 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31733/12002
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc
5. Coleman No. 28 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31734/12143
2. 42–211–31072–0000
3. 103 000 000
4. Diamond Shamrock Corp
5. Billy Jarvis & Sons G No. 1
6. Canadian SE
7. Hemphill, TX
8. 600.0 million cubic feet
9. May 7, 1980
10. Northern Natural Gas Co., Pioneer Natural Gas Co

1. 80–31735/12148
2. 42–181–30620–0000
3. 103 000 000
4. Gulf Oil Corp
5. Montgomery No. 1
6. Southmayd NE (Davis)
7. Grayson, TX
8. 203.0 million cubic feet
9. May 7, 1980
10. Lone Star Gas Co

1. 80–31736/12196
2. 42–337–00000–0000
3. 108 000 000
4. Walsh & Watts Inc
5. Hankins No. 2 (04121)
6. Montague County Regular
7. Montague, TX
8. 1.0 million cubic feet
9. May 7, 1980
10. J L Davis

1. 80–31737/12231
2. 42–427–00000–0000
3. 108 000 000
4. Exxon Corp
5. Vicente Saenz No. 5–C 64426
6. Sun (D–1)
7. Starr, TX
8. 5.8 million cubic feet
9. May 7, 1980
10. Tennessee Gas Pipeline Co

1. 80–31738/12239
2. 42–261–00000–0000
3. 108 000 000
4. Exxon Corp
5. Sarita Fld O & G Unit 95–F 05994
6. Sarita (17–I)
7. Kenedy, TX
8. 2.5 million cubic feet
9. May 7, 1980
10. Natural Gas Pipeline Co

1. 80–31739/12241
2. 42–047–00000–0000
3. 108 000 000
4. Exxon Corp
5. McGill Bros No. 107–T 50563
6. Kelsey South (20–F/N)
7. Brooks, TX
8. 6.1 million cubic feet
9. May 7, 1980
10. Trunkline Gas Co

1. 80–31740/12253
2. 42–435–00000–0000
3. 108 000 000
4. Suburban Propane Gas Corp
5. Mayer Ranch Et Al No. 1
6. Mayer Ranch Canyon
7. Sutton, TX
8. 12.0 million cubic feet
9. May 7, 1980
10. Northern Natural Gas Co

1. 80–31741/12346
2. 42–179–00000–0000
3. 108 000 000
4. O F Warren
5. E E Reynolds No. 2
6. Panhandle Gray County
7. Gray, TX
8. .2 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31742/12347
2. 42–179–00000–0000
3. 108 000 000
4. O F Warren
5. E E Reynolds No 3
6. Panhandle Gray County
7. Gray, TX
8. .2 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31743/12354
2. 42–179–00000–0000
3. 108 000 000
4. Alfred J Smith
5. Patton-Purviance No 1 (00616)
6. Panhandle Gray County Field
7. Gray TX
8. 4.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31744/12355
2. 42–179–00000–0000
3. 108 000 000
4. Alfred J Smith
5. Patton-Purviance No 4 (00616)
6. Panhandle Gray County Field
7. Gray TX
8. 4.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31745/12356
2. 42–179–00000–0000
3. 108 000 000
4. Alfred J Smith
5. Patton-Purviance No 5 (00616)
6. Panhandle Gray County Field
7. Gray TX
8. 4.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31746/12358
2. 42–179–00000–0000
3. 108 000 000
4. Alfred J Smith
5. Patton-Purviance No 8 (00616)
6. Panhandle Gray County Field
7. Gray TX
8. 4.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co

1. 80–31747/12359
2. 42–179–00000–0000
3. 108 000 000
4. Alfred J Smith
5. H M Davis No 7 (00429)
6. Panhandle Gray County Field
7. Gray TX
8. 1.6 million cubic feet
9. May 7, 1980

10. Phillips Petroleum Co
1. 80–31748/12360
2. 42–179–00000–0000
3. 108 000 000
4. Alfred J Smith
5. H M Davis No 6 (00429)
6. Panhandle Gray County Field
7. Gray TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31749/12361
2. 42–179–00000–0000
3. 108 000 000
4. Alfred J Smith
5. H M Davis No 2 (00429)
6. Panhandle Gray County Field
7. Gray TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31750/12362
2. 42–179–00000–0000
3. 108 000 000
4. Alfred J Smith
5. H M Davis No 3 (00429)
6. Panhandle Gray County Field
7. Gray TX
8. 1.6 million cubic feet
9. May 7, 1980
10. Phillips Petroleum Co
1. 80–31751/12394
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 3 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31752/12404
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 16 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31753/12414
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold No 5
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31754/12416
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold No 8
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31755/12421
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold No 15
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31756/12422
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Arnold No 16
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31757/12430
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 1
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31758/12431
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 2
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31759/12432
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 3
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31760/12433
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 5
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31761/12434
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 6
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31762/12435
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 7
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31763/12436
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 9
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31764/12437
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 10
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31765/12438
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 11
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31766/12439
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Harrah No 12
6. Panhandle Gray
7. Gray TX
8. 4.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31767/12463
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Alex Smith No 1
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31768/12464
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Alex Smith No 3
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31769/12465
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. Alex Smith No 5
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co
1. 80–31770/12467
2. 42–179–00000–0000

3. 108 000 000
4. Gulf Oil Corp
5. Alex Smith No 7
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31771/12469
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. R B Thompson Etal No 4
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31772/12470
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. R B Thompson Etal No 5
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31773/12471
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. R B Thompson Etal No. 7
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31774/12472
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. R B Thompson Etal No. 8
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31775/12474
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. R B Thompson Etal No. 10
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31776/12477
2. 42–179–00000–0000
3. 108 000 000
4. Gulf Oil Corp
5. R B Thompson Etal No. 14
6. Panhandle Gray
7. Gray TX
8. 5.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31777/12495
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J No. 7
6. Panhandle-Hutchinson
7. Hutchinson TX
8. 1.5 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31778/12496
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J No. 8
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .6 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31779/12505
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell L No. 3
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .9 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31780/12861
2. 42–317–00000–0000
3. 103 000 000
4. Maquire Oil Co
5. Hale No. 1–29
6. Ackerly (Dean Sand)
7. Martin TX
8. 50.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31781/12937
2. 42–233–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Turner-Kent B No. 8
6. Panhandle-Hutchinson
7. Hutchinson TX
8. 3.0 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31782/13316
2. 42–365–30913–0000
3. 102 000 000
4. Phillips Petroleum Co
5. Naomi O No. 3
6. Carthage
7. Panola TX
8. 900.0 million cubic feet
9. May 7, 1980
10.

1. 80–31783/13389
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Cockrell C–19 (00816)
6. Panhandle-Hutchinson County
7. Hutchinson TX
8. 2.3 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31784/13391
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Cockrell C–17 (00816)
6. Panhandle-Hutchinson County
7. Hutchinson TX
8. 2.3 million cubic feet
9. May 7, 1980
10. Getty Oil Co

1. 80–31785/14359
2. 42–161–30471–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Holmes A No. 1
6. Bear Grass (Cotton Valley Lime)
7. Freestone TX
8. 1000.0 million cubic feet
9. May 7, 1980
10. United Gas Pipeline Co

1. 80–31786/15502
2. 42–367–31099–0000
3. 102 000 000
4. Diamond Shamrock Corp
5. A J Hutcheson No. 1
6. Reno
7. Parker TX
8. 249.0 million cubic feet
9. May 7, 1980
10. Southwestern Gas Pipeline Inc

1. 80–31787/15673
2. 42–195–00000–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Hitch E No. 2
6. W Hitchland L Morrow
7. Hansford TX
8. 16.0 million cubic feet
9. May 7, 1980
10. Panhandle Eastern Pipeline Co

1. 80–31788/16119
2. 42–365–30880–0000
3. 102 000 000
4. Jack L Phillips
5. Bill Powers No. 1 83939
6. Carthage (Cotton Valley)
7. Panola TX
8. 219.0 million cubic feet
9. May 7, 1980
10. United Gas Pipe Line Co

1. 80–31789/16571
2. 42–051–30462–0000
3. 102 000 000
4. Texas Oil & Gas Corp
5. Worthy A No. 1
6. Bear Grass (Cotton Valley Lime)
7. Freestone TX
8. .0 million cubic feet
9. May 7, 1980
10. United Gas Pipe Line Co

1. 80–31790/16627
2. 42–285–31165–0000
3. 102 000 000
4. Howell Drilling Inc
5. Mertz Gas Unit No. 2 Well No. 1
6. Word
7. Lavaca TX
8. 250.0 million cubic feet
9. May 7, 1980
10.

1. 80–31791/16934
2. 42–395–00000–0000
3. 102 000 000
4. Lear Petroleum Corp
5. Lee Martin Gas Unit No. 1
6. Bald Prairie
7. Robertson TX
8. 730.0 million cubic feet
9. May 7, 1980
10. Producers Gas Company United Texas Transmission Co Texas Utilities Fuel Co

1. 80–31792/16991
2. 42–365–30900–0000
3. 102 000 000
4. Pennzoil Producing Co
5. Shaw Unit No. 3

6. Carthage/Cotton Valley
7. Panola TX
8. 550.0 million cubic feet
9. May 7, 1980
10. United Gas Pipe Line Co

1. 80–31793
2. 42–051–30427–0000
3. 102 000 000
4. Keith D Graham
5. E Knesek No. 1 ID No. 12465
6. Giddings (Austin Chalk)
7. Burleson TX
8. 90.0 million cubic feet
9. May 7, 1980
10. Champlin Petroleum Co

U.S. Geological Survey, Metairie, La.

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–31794/GO–1244
2. 42–709–40391–0000–0
3. 102 000 000
4. Amoco Production Co
5. OCS–G–2698 #B–10
6. High Island Area-South Addition
7. A–537
8. 183.0 million cubic feet
9. May 2, 1980
10. Northern Natural Gas Co

U.S. Geological Survey, Albuquerque, N. Mex.

1. Control Number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 80–31795/NM 32–79–SA
2. 30–039–06540–0000–0
3. 108 000 000 denied
4. Mobil Oil Corp
5. Jicarilla H No. 10
6. Gavilan Pictured Cliffs
7. Rio Arriba, NM
8. 9.0 million cubic feet
9. April 28, 1980
10. Northwest Pipeline Corp

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection,except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this notice in the **Federal Register.**

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–15813 Filed 5–22–80; 8:45 am]

BILLING CODE 6450–85–M

Office of Nuclear Energy

The State Planning Council on Radioactive Waste Management; Change in Meeting Location

This notice is given to advise of a change in location of meeting of The State Planning Council on Radioactive Waste Management. The Council will meet Tuesday, June 3, 1980, 9:00 a.m. to 5:00 p.m., in the Campus Room of the Capstone Conference Center, University of South Carolina, Columbia, South Carolina, rather than the Hanford House Thunderbird, 802 George Washington Way, Richland, Washington, as previously announced. A notice of meeting was published in the issue of May 15, 1980 (45 FR 32113). For further informaton contact Janie Shaheen, Staff Contact for the State Planning Council, Telephone: 202–624–5834.

Issued at Washington, D.C. on May 19, 1980.

Georgia Hildreth,

Director Advisory Committee Management.

[FR Doc. 80–15806 File 5–22–80; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1500–1; OPTS–51066]

Certain Companies Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of six PMN's and provides a summary of each.

DATE: Written comments by July 4, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, 202–755–8050.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Green, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency 401 M St. SW, Washington, DC 20460, 202–426–2601.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanfacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 6, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the

submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventoy, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before July 4, 1980, submit to the document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St. SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control "[OPTS–51066]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: May 16, 1980.

John P. DeKany,

Deputy Assisant Administrator for Chemical Control.

PMN 80–93

Close of Review Period. August 3, 1980.

Manufacturer's Identity. International Flavors & Fragrances Inc., 521 West 57th St., New York, NY 10019.

Specific Chemical Identity. 4,7-Methano-1*H*-inden-5-o1- 3a,4,5,6,7,7a-hexahydro-dimethyl.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Fragrance material for soaps and detergents, functional products, and fine fragrances.

Production Estimates:

	(kg/yr)	
	Minimum	Maximum
First year	50	500
Second year	100	1,000
Third year	200	2,000

Physical/Chemical Properties:

Appearance—Colorless semi-solid liquid.
Boiling point—Range 88°–99° at 3mm.
Solubility—Soluble in organic solvents; insoluble in water.
Flashpoint—>180°F.

Toxicity Data:

Dermal LD_{50} (rat)—>5 g/kg body weight.
Phototoxicity (mouse)—Not phototoxic at 5% in ethanol on the skin of the hairless mouse.
Eye irritation (rabbit)—Neat material produced conjunctival irritation which did not clear in seven days, when tested with no washout (modified draize); Draize Index = 40 in one of six animals vessel injection.
Skin irritation/sensitization (guinea pig)—Mild irritation at 10% in ethanol under occlusion; no irritation at 5% in ethanol under occlusion; At 5% in ethanol under occlusion, 9 of 15 guinea pigs were sensitized (Buehler protocol).
Oral LD_{50} (rat)—In progress.
Skin irritation/sensitization (human)—In progress; Draize Shelanski RIPT underway at 2.5%.

Exposure/Disposal

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration	
			Hour/day	Day/year	Average	Peak
Occupational:						
Union Beach, NJ site:						
Manufacture	Dermal inhalation.	10	Accidental contact only		0–1 ppm	1–10 ppm.
Disposal	Dermal inhalation.	10	Accidental contact only		0–1 ppm	1–10 ppm.
Physical state of substance to which workers may be exposed: Fume or liquid.						
Hazlet, NJ site:						
Processing	Dermal inhalation.	Unknown	Accidental contact only		0–1 ppm	1–10 ppm.
Disposal	Dermal inhalation.	Unknown	Accidental contact only		0–1 ppm	1–10 ppm.
Physical state of substance to which workers may be exposed: fume or liquid. Effluent plant discharge into regional sewage system. Charcoal filters present in all exhaust fans.						

PMN 80–94

Close of Review Period. August 3, 1980.

Manufacturer's Identity. E. I. Du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential. Generic name provided: Monosubstitutedbenzenesulfonamide.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Captive intermediate.

Production Estimates. Claimed confidential.

Occupational Exposure:

Submitter's site	Route(s)	Number [1]	Maximum duration of exposure
Belle, West Va	Inhalation	4	256 da/yr; 8 hr/da.
(2nd & 3rd years)	Dermal	4	256 da/yr; 8 hr/da.
Wilmington, DE	Inhalation	7	135 da/yr; 8 hr/da.
(1st year)	Dermal	7	135 da/yr; 8 hr/da.

[1] Potentially exposed workers.

Physical/Chemical Properties:

Melting Points—180°–185°C crude; 187°–189°C pure.
Minimum purity—95%.
Description—Orange to brown crystalline solid. White when pure.
Reaction—Stable to ambient conditions.

Toxicity Data:

Oral approximate lethal dose (ALD) (rats)—7,500 mg/kg.
Eye irritation (rabbits)—Non-irritant.
Skin irritation and sensitization (guinea pigs)—Mild to non-irritant.
Mutagenicity-Ames (*Salmonella typhimurium*)—Non-mutagenic.

Environmental Release/Disposal:

Submitter's site	Method(s) of disposal	Release to the environment
Belle, West VA	Water	Minimal and incidental.
(2nd & 3rd years)	Land	Minimal and incidental.
Wilmington, DE	Water	Minimal and incidental.
(1st year)	Land	Minimal and incidental.

PMN 80–95

Close of Review Period. August 3, 1980.

Manufacturer's Identity. E. I. Du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential. Generic name provided: Monosubstitutedbenzenesulfonyl chloride.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Captive intermediate.

Production Estimates. Claimed confidential.

Occupational Exposure:

Submitter's site	Route(s)	Number [1]	Maximum duration of exposure
Belle, West Va	Dermal	8	146 da/yr; 8 hr/da.
(2nd & 3rd years)	Inhalation	8	146 da/yr; 8 hr/da.
Wilmington, DE	Inhalation	7	90 da/yr; 8 hr/da.
(1st year)	Dermal	7	90 da/yr; 8 hr/da.

[1] Potentially exposed workers.

Environmental Release/Disposal:

Submitter's site	Method(s) of disposal	Release to the environment
Belle, West VA	Water	Minimal, incidental.
(2nd & 3rd years)	Land	Minimal, incidental.
Wilmington, DE	Water	Minimal, incidental.
(1st year)	Land	Minimal, incidental.

Physical/Chemical Properties:

Boiling Point—94°C/.6 mm.

Appearance—Reddish brown liquid. Colorless when pure.

Reactions—Stable to ambient conditions. Reacts slowly with an ethanol-water solution.

Toxicity Data:

Oral LD_{50} (rats)—3,427 mg/kg.

Eye irritation (rabbits)—Severe eye irritant.

Skin irritation and sensitization (guinea pigs)—Moderate to no irritation at 2.5% solution.

Mutagenicity-Ames (*Salmonella typhimurium*)—Non-mutagenic.

PMN 80–96

Close of Review Period. August 3, 1980.

Manufacturer's Identity. E. I. Du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential. Generic name provided: Monosubstitutedbenzenediazomium chloride.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Captive intermediate.

Production Estimates. Claimed confidential.

Physical/Chemical Properties:

Appearance—About 25% aqueous solution. Crystalline solid if isolated.

Reactions—Explosive when isolated. Decomposes rapidly at room temperature in aqueous solution.

Toxicity Data: No data were submitted.

Occupational Exposure:

Submitter's site	Route(s)	Number	Maximum duration of exposure
Belle, West Va	Inhalation	8	146 da/yr; 8 hr/da.
(2nd & 3rd years)	Dermal	8	146 da/yr; 8 hr/da.
Wilmington, DE	Inhalation	7	90 da/yr; 8 hr/da.
(1st year)	Dermal	7	90 da/yr; 8 hr/da.

PMN 80–97

Close of Review Period. August 3, 1980.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical identity. Claimed confidential. Generic name provided: Trisubstitutedtriazine.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Captive intermediate.

Production Estimates. Claimed confidential.

Physical/Chemical Properties:

Solubility—Water 0.5 g/L. Methanol 1.94 g/L.

Minimum purity—97–99.

Description—Off-white crystalline solid.

Reaction—Stable to ambient conditions.

Toxicity Data:

Oral LD_{50} (rats)—1,680 mg/kg.

Eye irritation (rabbits)—Mild irritant.

Skin irritation and sensitization (guinea pigs)—Mild to none.

Mutagenicity-Ames (*Salmonella typhimurium*)—Non-mutagenic.

Occupational Exposure:

Submitter's site	Route(s)	Number [1]	Maximum duration of exposure
Belle, West VA. (2nd & 3rd years)	Inhalation	4	219 da/yr; 8 hr/da.
	Dermal	4	219 da/yr; 8 hr/da.
Wilmington, DE (1st year)	Inhalation	7	90 da/yr; 8 hr/da.
	Dermal	7	90 da/yr; 8 hr/da.

[1] Potentially exposed workers.

Environmental Release/Disposal:

Submitter's site	Method(s) of disposal	Release to the environment
Belle, West VA. (2nd & 3rd years)	Water	Minimal, incidental.
	Land	Minimal, incidental.
Wilmington, DE (1st year)	Water	Minimal, incidental.
	Land	Minimal, incidental.

PMN 80-98

Close of Review Period. August 3, 1980.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential. Generic name provided: Monosubstituted alkanimidic acid, alkyl ester.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Captive intermediate.

Production Estimates. Claimed confidential.

Physical/Chemical Properties:

Boiling point—65°C/5 mm.
Appearance—Colorless liquid.
Reaction—Stable to ambient conditions.

Toxicity Data:

Oral LD_{50} (rats)—494 mg/kg.
Eye irritation (rabbits)—Mild.
Skin irritation and sensitization (guinea pigs)—Moderate to none.
Mutagenicity-Ames *(Salmonella typhimurium)*—Weakly mutagenic.

Occupational Exposure:

Submitter's site	Route(s)	Number [1]	Maximum duration of exposure
Belle, West VA. (2nd & 3rd years)	Inhalation	8	110 da/yr; 8 hr/da.
	Dermal	8	110 da/yr; 8 hr/da.
Wilmington, DE (1st year)	Inhalation	7	45 da/yr; 8 hr/da.
	Dermal	7	45 da/yr; 8 hr/da.

[1] Potentially exposed workers.

Environmental Release/Disposal.

Submitter's site	Method(s) of disposal	Release to the environment
Belle, West VA. (2nd & 3rd years)	Water	Minimal, incidental.
	Land	Minimal, incidental.
Wilmington, DE (1st year)	Water	Minimal, incidental.
	Land	Minimal, incidental.

[FR Doc. 80-15880 Filed 5-22-80: 8:45 am]
BILLING CODE 6560-01-M

[FRL 1499-8; OPTS-51065]

Certain Companies Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATE: Written comments by June 23, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Radosevich, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-2601.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 6, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim

confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register**.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under a section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before June 23, 1980, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St. SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51065]" and the specific PMN number. Comments received may be seen in the above office between 8 a.m. and 4 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: May 14, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

PM 80–34.

Close of Review Period. July 23, 1980.

Manufacturer's Identity. Claimed confidential.

Specific Chemical identity. Claimed confidential. Generic name provided: Phosphorodithioic acid, dialkyl ester, C_{12-14} tertalkylamine salts.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Not known to manufacturer.

Production Estimates. Claimed confidential.

Physical/Chemical Properties. Claimed confidential.

Toxicity Data. (Submitted April 11, 1980.)

Oral LD_{50}	2.8 gm/kg.
Primary skin irritation index	3.54.
Eye irritation score	6.7, 3.0, 2.3, 0 and 0 at 24, 48, and 72 hours, 5 and 7 days respectively.

Exposure and Environmental Release. Human exposure and environmental release at the manufacturer's sites.

Maximum number exposed	10.
Maximum duration of exposure	4 hr/wk, 50 wk/yr.

PMN 80–35.

Close of Review Period. July 23, 1980.

Manufacturer's Identity. Claimed confidential.

Specific Chemical Identity. Claimed confidential. Generic name provided: Substituted phenol, reaction products with C_{22-30} alkenes.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Lubricant additive.

Production Estimates. Claimed confidential.

Toxicity Data.

Estimated oral LD_{50} (rats)	>16 g/kg
Primary skin irritation index	3.42.
Eye irritation score	5.3, 2.0, 1.0, 0 and 0 at 24, 48, 72 hours, 5 and 7 days respectively.

Exposure and Evironmental Release. Due to the chemical substance high boiling point and low order of acute oral toxicity no environmental hazard in its use and/or disposal is anticipated.

Maximum number exposed	10.
Maximum duration	4 hr/wk, 50 wk/yr.

[FR Doc. 80–15881 Filed 5–22–80; 8:45 am]

BILLING CODE 6560–01–M

[FRL 1499–7]

Establishment and Membership of the Performance Review Board

May 15, 1980.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Establishment and Membership of the Performance Review Board.

SUMMARY: This Notice announces the establishment by the Administrator of the Environmental Protection Agency (EPA) of the Agency's Performance Review Board (PRB) and the appointment of the twelve individuals who will serve on this body, as provided for in Section 4314 of Title 5, United States Code.

The purpose of the Performance Review Board is to review initial senior executive appraisals and to make recommendations to the Administrator concerning performance of senior executives in the Agency and performance awards.

ADDRESSES: The names, titles, and addresses of the individuals appointed to the EPA Performance Review Board are:

1. Mr. David O. Bickart, Deputy General Counsel, Office of General Counsel, Environmental Protection Agency, Washington, D.C. 20460.

2. Dr. Marilyn C. Bracken, Deputy Assistant Administrator for Program Integration and Information, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460.

3. Mr. Charles L. Elkins, Deputy Assistant Administrator for Noise Abatement and Control, Office of Air, Noise, and Radiation, Environmental Protection Agency, Washington, D.C. 20460.

4. Ms. Louise Giersch, Director, Air and Hazardous Materials Division, Region IX, Environmental Protection Agency, San Francisco, California 94105.

5. Mr. Clarence Hardy, Director of Personnel, Office of Planning and Management, Environmental Protection Agency, Washington, D.C. 20460 (Executive Secretary, PRB).

6. Mr. Robert J. Knox, Acting Director, Office of Civil Rights, Environmental Protection Agency, Washington, D.C. 20460.

7. Mr. Donald B. Mausshardt, Assistant to the Deputy Administrator and Director, Office of Operations Coordination, Environmental Protection Agency, Washington, D.C. 20460.

8. Ms. Marian Mlay, Associate Deputy Assistant Administrator for Drinking Water, Office of Water and Waste

Management, Environmental Protection Agency, Washington, D.C. 20460.

9. Mr. John B. Molloy, Director, Enforcement Division, Office of Enforcement, Environmental Protection Agency, Washington, D.C. 20460.

10. Ms. Frances E. Phillips, Deputy Regional Administrator, Region VI, Environmental Protection Agency, Dallas, Texas 75270.

11. Mr. Samuel Rondberg, Director Office of Research Program Management, Office of Research and Development, Environmental Protection Agency, Washington, D.C. 20460.

12. Mr. Saul R. Rosoff, Associate to the Assistant Administrator for Management Reform, Office of Planning and Management, Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Environmental Protection Agency Performance Review Board may contact Mr. Clarence Hardy, Director of Personnel, Environmental Protection Agency, Washington, D.C. 20460; telephone (202) 755–2922.

Douglas M. Costle,

Administrator.

[FR Doc. 80–15879 Filed 5–22–80; 8:45 am]

BILLING CODE 6560–01–M

[FRL 1500–3]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A–104), U.S. Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental impact statements (EISS) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of May 12, 1980 to May 16, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from May 16, 1980 and will end on July 7, 1980. The 30-day review period for final EIS's as calculated from May 23, 1980 will end on June 23, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following sources:

For public availability and/or hard copy reproduction of EIS's filed prior to March 1980: Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, DC 20036.

For hard copy reproduction or microfiche: Information Resources Press, 1700 North Moore Street, Suite 700A, Arlington, Va 22209, (703) 558–8270.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review (A–104), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 245–3006.

SUMMARY OF NOTICE: On July 30, 1979, the CEQ Regulations became effective. Pursuant to section 1506.10(A), the 30-day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of May 12, 1980 to May 16, 1980 the 30-day review period will be calculated from May 23, 1980. The review period will end on June 23, 1980.

Appendix I sets forth a list of EIS's filed with EPA during the week of May 12, 1980 to May 16, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and county(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or EPA has approved a waiver from the prescribed review period. The appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and county(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the newly established date for comments.

Appendix III set forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous notices of availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agency.

Appendix V sets forth a list of reports or additional supplemental information relating to previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: May 20, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A–104).

Appendix I—EIS's Filed With EPA During The Week of May 12 Through 16, 1980

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412–A, Admin. Building, Washington, D.C. 20250, (202) 447–3965.

Animal and Plant Health Inspec. Service

On May 16, 1978 CEQ, in view of an emergency situation, approved the following action for the Rangeland Grasshopper Mgmt. EIS:

(a) issuance of a record of decision on May 22, 1980 for only those elements of the proposed program now scheduled to commence prior to July 1, 1980;

(b) consideration to all comments received by June 23, 1980 on elements of the proposed program scheduled to commence on or July 1, 1980;

(c) June 30, 1980 issuance of a separate record of decision for the balance of the 1980 program.

Final

Rangeland Grasshopper Cooperative Management, programmatic, several, May 16: Proposed is a management program for the protection of rangelands and agricultural crops from damage by grasshoppers. Several alternatives are considered which include: (1) no action; (2) biological control; (3) use of biological agents such as fungi, bacteria, viruses, protozoa, and parasites and predators; (4) cultural and mechanical; (5) integrated pest management; (6) eradication; and (7) chemical insecticides. The plan of work will be site specific for a grasshopper management action plan. (USDA–APHIS–ADM–79–1–F). Comments made by: USDA DOI, State agencies, groups, individuals and businesses. (EIS order No. 800381.)

Forest Service

Draft

Mt. Howard/Wing Ridge Expansion Wallowa-Whitman NF, Wallowa County, Oregon, May 15: Proposed is the expansion of Mt. Howard and the development of Wing Ridge within the Wallowa-Whitman National Forest, Wallowa County, Oregon, for winter sports. The alternatives to consider: (1) no action, (2) approval of Mt. Howard Master Plan, (3) approval of Wing Ridge proposal, and (4) approve both Wing Ridge and Mt. Howard proposals. (EIS order No. 800373.)

Soil Conservation Service

Final

South Priceboro Creek, Flood Prevention, Linn County, Oregon, May 16: The proposed project will reduce the time of flooding on 330 acres of cropland accomplished by channel improvements to South Priceboro Creek located in Linn County, Oregon. The measures to be taken include enlargement and improvement of approximately 2 miles of the creek, and a small concrete structure to be built at the upper end of the project to divert irrigation waters. Comments made by: EPA, USDA, DOE, State agencies, groups. (EIS order No. 800380.)

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272–0121.

Draft

Maryland Coast and Assateague Island Beach Erosion, Virginia, May 13: Proposed are beach erosion and hurricane protection plans for the Atlantic Coast of Maryland and Assateague Island, Virginia. Plan 1 consists solely of beach nourishment for the purpose of erosion control. Plan 2 provides for storm protection only. Plan 3 is a combined plan providing storm protection and erosion control. Plan 4 provides for limited storm protection. Plan 5 consists of nonstructural measures which utilize the existing beach. (Baltimore District), (EIS order No. 800369.)

Saipan Small Boat Harbor, Saipan, US Territory Proposed is the creation of a small boat harbor on the Island of Saipan in the Commonwealth of the Northern Mariana Islands. The Garapan Dock and Saipan Harbor areas are being studied. Both plans consist of dredging an entrance channel and basin and the construction of protective rock structures. Plan 2 (Saipan Harbor) would involve less dredging than Plan 1 (Garapan Dock). (Honolulu District) (EIS order No. 800364.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377–4335.

National Oceanic and Atmospheric Administration

Draft

Narragansett Bay Estuarine Sanctuary, Grant, Rhode Island, May 16: Proposed is the awarding of a grant for establishment of an estuarine sanctuary in Narragansett Bay, Rhode Island. The grant would be used for acquisition of 203 acres of uplands and wetlands on Patience Island. The sanctuary would be used primarily for research and educational purposes, especially to provide information useful for coastal zone management decision making. Recreational uses would be encouraged where compatible. Boundary and management alternativea are considered. (EIS Order No. 800378.)

Northern Mariana Islands Coastal Resources Mgmt., U.S. Territory, May 16: Proposed is a coastal resources management plan for the Commonwealth of the Northern Mariana Islands. Approval would permit implementation of the proposed program, allow program administration grants to be awarded to the state, and require that federal actions be consistent with the program. The effect of these policies and standards is to condition, restrict, or prohibit some uses in parts of the coastal zone, while encouraging development and other uses in other parts. (EIS Order No. 800375.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Wallace Stickney, Region I, Environmental Protection Agency, John F. Kennedy Federal Bldg., Room 2203, Boston, Massachusetts 02203, (617) 223–4635.

Final

Central Massachusetts Water Quality Mgmt. Plan, several counties in Massachusetts, May 15: Proposed is the Central Massachusetts 208 Water Quality Management Plan. Alternatives are identified and recommendations are made in areas of land use, facility planning, on-lot waste disposal systems, industrial wastes, residual waters, urban runoff, non-point sources and other lesser sources of water pollution as well as the management structures to carry out these recommendations. Comments made by: USDA, DOI, DOT, State and Local Agencies, Businesses. (EIS Order No. 800371.)

Contact: Mr. Clinton Spotts, Region VI, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2716.

Bleached Kraft Market Pulp Mill, NPDES Permit, Newton County, Texas, May 15: Proposed is the issuance of an NPDES permit for the discharge of treated wastewater into the Sabine river resulting from the proposed construction of a 650 ton/day bleached kraft market pulp mill to be located near Bon Weir in Newton County, Texas. The alternatives consider build and no-build. Within the build alternative two types of processing are considered: 1) conventional five stage bleaching, and 2) the addition of oxygen delignification to the bleaching process. Provisions are also made for the management of solid wastes. Comments made by: DOT, AHP, DOE, HUD, DOI, COE, USDA, State and Local Agencies, Groups, and Individuals. (EIS Order No. 800372.)

Contact: Patrica Eklund, Region IX, Environmental Protection Agency, 215 Fremont Street, San Francisco, California, 94105, (415) 556–8030.

Santa Cruz Wastewater Facilities Plan, 201 Grant, Santa Cruz County, California, May 12: Proposed is a wastewater treatment facilities plan for the City and County of Santa Cruz, California. The selected alternative would provide oxygen-activated sludge secondary treatment at Nearys Lagoon plant site with year round discharge through an extended outfall to the Pacific Ocean. All of the alternatives considered maintain ocean discharge from the Santa Cruz treatment plant and all upgrade treatment to at least secondary treatment. (EPA–9–CA–Santa Cruz–WWPT–79). Comments made by: AHP, COE, DOI, State and Local Agencies, Groups, and Individuals. (EIS Order No. 800383.)

DEPARTMENT OF HEW

Contact: Mr. Charles Custard, Director, Office of Environmental Affairs, Department of Health, Education and Welfare, Room 524 F2, Hubert H. Humphrey Bldg., 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–7243.

Draft

FDA Headquarters Laboratory Facilities, Prince Georges County, Maryland, May 16: Proposed is the construction of FDA Headquarters Laboratory Facilities in Beltsville, Prince Georges County, Maryland. A phased development program for new facilities has been established which would provide FDA with new facilities in several stages. The site encompasses approximately 244 acres. Several site alternatives were considered. (EIS Order No. 800377.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–6300.

Final

First Colony Subdivision, Sugar Land, Fort Bend County, Texas, May 14: Proposed is the issuance of HUD home mortgage insurance for the First Colony Subdivision in Sugar Land, Fort Bend County, Texas. When completed, the subdivision, which encompasses 7,300 acres, will include approximately 13,200 single-family units, and 9,000 multi-family units, plus some shopping and recreational facilities. (HUD–RO6–EIS–6F) Comments made by: EPA, COE, USDA, AHP, DOI, FEMA, State and Local Agencies, Groups, Individuals, and Businesses (EIS Order No. 800370.)

Final Supplement

Jonathan New Community, Chaska, Carver County, Minnesota, May 16: Proposed is the acquisition and disposition of Jonathan New Community in Chaska, Carver County, Minnesota. The actions involved are: 1) termination of Title IV status and assistance, 2) complete acquisition through judicial foreclosure, 3) implement a plan of disposition, and 4) provide limited funding for operation of the Jonathan Association. The alternative considered entails a contested foreclosure with indefinite period of no development. Comments made by: EPA, DOI, DOT, Local Agencies, Individuals, and Businesses. (EIS Order No. 800382.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

Bureau of Land Management

Draft Supplement

Beaufort Sea Oil and Gas Lease Sale (DS–1) Alaska, May 16: Proposed is the issuance of leases on federally-managed tracts in the Beaufort Sea, Alaska, under the terms and conditions set out in the Notice of Sale of November 7, 1979. The alternatives to his action are: 1) Proceed with sale, 2) modify

sale, 3) reschedule sale, and 4) cancel sale. With regard to the four Dinkum Sands tracts, the action under consideration is the temporary relinquishment of Federal claims to management control. This statement supplements a final EIS, No. 790870, filed 8–10–79. (EIS Order No. 800379.)

DEPARTMENT OF DEFENSE—Navy

Contract: Mr. Ed Johnson, Head, Environmental Impact Statement/RDT&E Branch, Office of the Chief of Naval Operations, Department of the Navy, Washington, D.C. 20350, (202) 697–3689.

Draft Supplement

Kings Bay FBM Submarine Support Base, Camden County, Georgia, May 15: Proposed is the construction and operation of an Atlantic Coast Strategic Submarine Base at the current Naval Submarine Support Base, Kings, Bay, Camden County, Georgia. The action also includes strategic and defensive weapons storage and transfer, refit industrial support, complete pipeline refresher and off-crew training, waterfront support, possible relocation of some waterfront facilities, administrative and personnel support and on-base housing. Also considered is future expanison to accommodate two other squadrons. This statement supplements final EIS, No. 771513, filed 12/12/77. (EIS Order No. 800374.)

TENNESSEE VALLEY AUTHORITY

Contact: Dr. Mohamed T. El-Ashry, Director of Environmental Quality, Tennessee Valley Authority, Forestry Building 37828, Norris, Tennessee 37828, (615) 632–6450; FTS 856–6450.

Final

Mallard-Fox Creek Area Development and use, Morgan and Lawrence Counties, Alabama, May 13: Proposed is a development and use plan for the Mallard-Fox Creek area on Wheeler Reservoir in Morgan and Lawrence Counties, Alabama. The TVA owns approximately 1,950 acres of the area and has received two industrial requests for portions of the property which is currently being managed as a wildlife area. As a result, TVA proposes to make available 44 acres for the construction of a rail barge facility, up to 200 acres for the construction of a plastics manufacturing plant, and 206 acres for future industrial use. The remaining 1,500 acres would be committed to long-term, intensive wildlife management. The draft EIS No. 90284, filed 3–16–79 is replaced by revised draft No. 91157, filed 11–13–79. Comments made by: USDA, COE, DOI, EPA, State and Local Agencies, Groups, Individuals, and Businesses. (EIS Order No. 800367.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transporation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426–4357.

Federal Aviation Administration

Final

Tulsa International Airport Development, Tulsa County, Oklahoma, May 13: Proposed is the approval of funding for improvements of the Tulsa International Airport in the City and County of Tulsa, Oklahoma. The improvements include: 1) extension of Runway 15R/35L and parallel taxiway, 2) relocation of airport perimeter road, 3) acquisition of 17 acres of land south and east of Runway 17R/35L for clear zone and approach protection, and 4) installation of a full instrument landing system and medium intensity aproach lighting system/runway alignment indicator lights. Comments made by: DOI, USDA, DOT, COE, HEW, EPA, State and Local Agencies, Groups. (EIS Order No. 800366.)

Federal Highway Administration

Draft

I–94 Interchange Improvements, City of Romulus, Wayne County, Michigan, May 16: Proposed are interchange improvements at the junctions of I–94 at Merriman and Middlebelt Roads in the City of Romulus, Wayne County, Michigan. The improvements would consist of reconstruction or relocation of exit and entrance ramps at the two roads and collector-distributor roads. The alternatives include: (1) no action, (2) alternate mode of transportation, and (3) upgrading the existing facility. (FHWA–MI–EIS–79–03–D) (EIS Order No. 800376.)

TN–92, Dumplin Valley Road to Jefferson City, Jefferson County, Tennessee, May 13: Proposes is the improvement of TN–92 from Dumplin Valley Road to the Southern Railroad Crossing north of Jefferson City, in Jefferson County, Tennessee. The length of improvement extends for 7.2 miles and would include a four-lane divided highway in rural areas and as a five lane highway in urban areas. The alternatives consider: (1) no build, (2) postponement, (3) lower level of service, (4) public transportation, and (5) three build alternatives. (FHWA–TN–EIS–80–01–D) (EIS Order No. 800368.)

Final

U.S. 50, White River, Washington City Bypass, Daviess and Knox Counties, Indiana, May 13: Proposed is the upgrading of a portion of US 50 extending from 5 miles east of the City of Vicinnes, Knox County, 27 miles to the east line of Daviess County, Indiana. The improvements to this section will include the transition to a four-lane divided highway with controlled access right-of-way. The alignment will be basically the same in the rural areas but relocated to bypass the City of Washington and for location of structures over the White River. (FHWA–IND–EIS–76–04–F) Comments made by: DOI, EPA, HUD, COE, DOT, State and local agencies. (EIS Order No. 800365.)

EIS's Filed During the Week of May 12 Through 16, 1980

[Statement title index—by State and county]

State	County	Status	Statement Title	Accession No.	Date Filed	Originating agency No.
Alabama	Lawrence	Final	Mallard-Fox Creek Area Development and Use	800367	May 13, 1980	TVA
	Morgan	Final	Mallard-Fox Creek Area Development and Use	800367	May 13, 1980	TVA
Alaska		Supple	Beaufort Sea Oil and Gas Lease Sale (DS–1)	800379	May 16, 1980	DOI
California	Santa Cruz	Final	Santa Cruz Wastewater Facilities Plan, 201 Grant	800383	May 12, 1980	EPA
Georgia	Camden	Supple	Kings Bay FBM Submarine Support Base	800374	May 15, 1980	USN
Indiana	Daviess	Final	US 50), White River Washington City Bypass	800365	May 13, 1980	DOT
	Knox	Final	US 50, White River, Washington City Bypass	800365	May 13, 1980	DOT
Maryland		Draft	Maryland coast and Assateague Island Beach Erosion.	800369	May 13, 1980	COE
	Prince Georges	Draft	FDA Headquarters Laboratory Facilities	800377	May 16, 1980	HEW
Massachusetts	Several	Final	Central Massachusetts Water Quality Mgmt. Plan	800371	May 15, 1980	EPA
Michigan	Wayne	Draft	I–94 Interchange Improvements, City of Romulus	800376	May 16, 1980	DOT
Minnesota	Carver	Supple	Jonathan New Community, Chaska	800382	May 16, 1980	HUD
Oklahoma	Tulsa	Final	Tulsa International Airport Development	800366	May 13, 1980	DOT
Oregon	Linn	Final	South Priceboro Creek, Flood Prevention	800380	May 16, 1980	USDA
	Wallowa	Draft	Mt. Howard/Wing Ridge Expansion Wallowa-Whitman NF.	800373	May 15, 1980 USDA.	
Programmatic		Final	Rangeland Grasshopper Cooperative Management.	800381	May 16, 1980	USDA
Rhode Island		Draft	Narragansett Bay Estuarine Sanctuary, Grant	800378	May 16, 1980	DOC
Several		Final	Rangeland Grasshopper Cooperative Management.	800381	May 16, 1980	USDA
Tennessee	Jefferson	Draft	TN–92, Dumplin Valley Road to Jefferson City	800368	May 13, 1980	DOT
Texas	Fort Bend	Final	First Colony Subdivision, Sugar Land	800370	May 14, 1980	HUD
	Newton	Final	Bleached Kraft Market Pulp Mill, NPDES Permit	800372	May 15, 1980	EPA
U.S. Territory		Draft	Saipan Small Boat Harbor, Saipan	800364	May 15, 1980	COE
		Draft	Northern Mariana Islands Coastal Resources Mgmt.	800375	May 16, 1980	DOC
Virginia		Draft	Maryland Coast and Assateague Island Beach Erosion.	800369	May 13, 1980	COE

Appendix II—*Extension/Waiver of Review Periods on EIS's Filed With EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in FEDERAL REGISTER	Waiver/ extension	Date review terminates
DEPARTMENT OF INTERIOR					
Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Building Department of the Interior, Washington, D.C. 20240, (202) 343-3891.	Superior Oil Co., Land Exchange and Oil Shale Resource Development.	Final 800258	May 21, 1980	Extension	June 4, 1980.
	McGregor Range Grazing Mgmt. program, Otero County, N. Mex.	Draft 800280	Apr. 25, 1980 (see app. I).	Extension	June 17, 1980.
	Beaufort Sea Oil and Gas Lease Sale, Alaska.	Draft supp. 800379	May 23, 1980 (see app. I).	Waiver	June 23, 1980.
U.S. ARMY CORPS OF ENGINEERS					
Mr. Richard Makinen, Office of Environmental Policy, Attn. DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.	Saipan Small boat Harbor, Saipan, Commonwealth of the Northern Marianas.	Draft 800364	May 23, 1980 (see app. I).	Extension	July 15, 1980.
	Atlantic Coast of Maryland and Assateague Island, Beach Erosion Control.	Draft 800369	May 23, 1980 (see app. I).	Extension	July 11, 1980.

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in FEDERAL REGISTER	Date of withdrawal
None.				

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/No.	Date notice published in FEDERAL REGISTER	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed With EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—Official Correction

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in FEDERAL REGISTER	Correction
FEDERAL ENERGY REGULATORY COMMISSION				
Dr. Jack M. Heinemann, Advisor on Environmental Quality, Room 3000 S-22, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8228.	Kootenai River hydroelectric project, License, Lincoln County, Mon.	Draft 800340	May 9, 1980	The abstract is expanded to include the following: "This notice supercedes a previous notice of availability published by the FERC in the FEDERAL REGISTER on April 15, 1980, 44 FR 25547. The Rural Electrification Administration (REA) is participating in the EIS process for the proposed project, as a cooperating Federal Agency with its internal identification number (USDA-REA-EIS (Adm.-80-1-D); the REA may use the forthcoming final EIS on this project to fulfill the NEPA requirements in conjunction with an REA potentially forthcoming major Federal action for guaranteeing loan funds in support of the proposed project to the Applicant. Other cooperating agencies are the U.S. Forest Service and Bonneville Power Administration."

Appendix VI.—Official Correction—Continued

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in FEDERAL REGISTER	Correction
DEPARTMENT OF INTERIOR				
Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Building, Department of the Interior, Washington, D.C. 20240, (202) 343-3891.	McGregor Range grazing mgmt. program, Otero County, N. Mex.	Draft 800280	Apr. 25, 1980	In the Notice published in the May 16, 1980 FR, an extension was published with an incorrect termination date. The correct termination date is June 17, 1980. (See Appendix II).

[FR Doc. 80-15263 Filed 5-22-80: 8:45 am]

BILLING CODE 6560-01-M

[FRL 1472-1; OPTS-51053]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 80-12303 appearing at page 27006 in the issue for Tuesday, April 22, 1980, make the following corrections:

1. On page 27007, in the second column, the tenth paragraph under *"Environmental Release/Disposal."*, the second and third lines reads "(rat) — $LD_{50} \leq 5.0$ g/kg, no deaths. Acute dermal toxicity (rabbit) — $LD_{50} \leq 2.9$ g/kg," should be corrected to read "(rat) — $LD_{50} > 5.0$ g/kg, no deaths. Acute dermal toxicity (rabbit) — $LD^{50} > 2.0$ g/kg,".

2. Also on page 27007, in the third column, the seventh paragraph, the second line reads "(rat — $LD_{50} \leq 5.0$ g/kg; 1/10 died at 5g/k." Should be corrected to read "(rat) — $LD_{50} > 5.0$ g/kg; 1/10 died at 5 g/kg."

3. Also on page 27007, in the third column the seventh paragraph, the fourth line reads "< 2.0 Kg, no deaths. Primary dermal" should be corrected to read "> 2.0 Kg, no deaths. Primary dermal".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

FM and TV Translator Applications Ready and Available for Processing

Adopted: May 8, 1980.

Released: May 14, 1980.

Notice is hereby given pursuant to §§ 73.3572(c) and 73.3573(d) of the Commission's rules, that on June 20, 1980, the TV and FM translator applications listed in the attached Appendix below will be considered ready and available for processing. Pursuant to §§ 1.227(b)(1) and 73.3591(b) of the rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on June 19, 1980, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on June 19, 1980.

Any party in interest desiring to file pleadings concerning any pending TV or FM translator application, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 73.3584(a) of the rules, which specifies the time for filing and other requirements relating to such pleadings.

FM Translator Applications

BPFT-791001IH (new), Marshfield, Stratford, Auburndale & Pittsville, Wisconsin, Living Word Communications, Inc. Req: Channel 261, 100.1 MHz, 1.0 watt. Primary: WWIB-FM, Ladysmith, Wisconsin.

BPFT-791001II (new), Pioche, Panaca, Caliente, Peck, Lund & Preston, Nevada, Trinity Temple Church db/as Tri-State Translators. Req: Channel 285, 104.9 MHz, 10 watts. Primary: KILA-FM, Henderson, Nevada.

BPFT-791016IC (new), Big Park Valley Area, Village of Oakcreek, Jacks Canyon, Valley Vista Estates, Arizona, Bell Rock TV Club, Inc. Req: Channel 257, 99.5 MHz, 1 watt. Primary: KOOL-FM, Phoenix, Arizona.

BPFT-791016IE (new), Big Park Valley Area, Village of Oakcreek, Jacks Canyon & Valley Vista Estates, Arizona, Bell Rock TV Club, Inc. Req: Channel 288, 105.5 MHz, 1 watt. Primary: KMEO-FM, Phoenix, Arizona.

BPFT-791022ID (new), Indian Springs, Nevada, Trinity Temple Church db/as Tri-State Translators. Req: Channel 285, 104.9 MHz, 10 watts. Primary: KIIA-FM, Henderson, Nevada.

BPFT-791107IC (new), Coalville & Unincorporated Summit County, Utah, Community Wireless of Park City, Inc. Req: Channel 201, 88.1 MHz, 10 watts. Primary: BPED-790507AD, Part City, Utah.

BPFT-791106IC (new), Trinity Center, California, North Lake Translator Group. Req: Channel 265, 100.9 MHz, 1 watt. Primary: KTMT-FM, Medford, Oregon.

BPFT-791108IF (new), Orangville & Rural Emery County, Utah. University of Utah. Req: Channel 202, 88.3 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IG (new), Randolph & Woodruff, Utah. University of Utah. Req: Channel 201, 88.1 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IH (new), Delta & Rural Millard County, Utah, University of Utah. Req: Channel 201, 88.1 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108II (new), Milford & Rural Beaver County, Utah, University of Utah. Req: Channel 202, 88.3 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IJ (new), Tabiona & Myton, Utah, University of Utah. Req: Channel 202, 88.3 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IK (new), Rural Summit County, Utah, University of Utah. Req: Channel 202, 88.3 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IL (new), Rural Wayne & Sevier Counties, Utah, University of Utah. Req: Channel 202, 88.3 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IM (new), Price & Rural Carbon County, Utah, University of Utah. Req: Channel 204, 99.7 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IN (new), Monticello, Blanding & Rural San Juan County, Utah, Req: Channel 216, 91.1 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IO (new), Tropic & Rural Garfield County, Utah, University of Utah. Req: Channel 216, 91.1 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IP (new), Laketown & Garden City, Utah, University of Utah. Req: Channel 216, 91.1 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IQ (new), Vernal & Redwash, Utah, University of Utah. Req: Channel 218, 91.5 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791108IR (new), Moab, Rural Grand & San Juan, Counties, University of Utah. Req: Channel 218, 91.5 MHz, 10 watts. Primary: KUER-FM, Salt Lake City, Utah.

BPFT-791128IK (new), Morgan Hill, California, The Audio House, Inc. Req:

Channel 257, 99.3 MHz, 1 watt. Primary: KOME–FM, San Jose, California.
BPFT–791129ID (new), Linden, New Jersey, John Randolph Getz. Req: Channel 205, 88.9 MHz, 10 watts. Primary: WVRM–FM, Hazlet, New Jersey.

UHF TV Translator Applications

BPTT–790503IF (new), Walsenburg, Colorado, University of Southern Colorado. Req: Channel 56, 722–728 MHz, 100 watts. Primary: KTSC–TV, Pueblo, Colorado.
BPTT–790904IL (new), Axial Basin Rural, Colorado, Moffat County. Req: Channel 60, 746–752 Mhz, 100 watts. Primary: KBTV–TV, Denver, Colorado.
BPTT–791911IC (new), Winnemucca, Nevada, Humboldt County. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KCRL–TV, Reno, Nevada.
BPTT–790926IA (new), South Fork & Rural Area, Colorado, South Fork TV Association. Req: Channel 57, 728–734 Mhz, 20 watts. Primary: KNME–TV, Albuquerque, New Mexico.
BPTT–800211IH (new), Trinidad, Valdez & Hoehne, Colorado, University of Southern Colorado. Req: Channel 69, 800–806 Mhz, 100 watts. Primary: KTSC–TV, Pueblo, Colorado.
BPTT–800211II (new), Alamosa, La Jara, Manassa, Romeo & Antonito, Colorado, University of Southern Colorado. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KTSC–TV, Pueblo Colorado.
BPTT–800211IJ (new), Saldia, Buena Vista, Center & Monte Vista, Colorado, University of Southern Colorado. Req: Channel 53, 704–710 MHz, 100 watts. Primary: KTSC–TV, Pueblo, Colorado.
BPTT–800421IA (new), Port Orford, Oregon, State of Oregon Acting By and Through The State Board of HIgher Education. Req: Channel 61, 752–758 Mhz, 100 watts. Primary: KOAP–TV, Portland, Oregon.
BPTT–800421IB (new), Gold Beach, Oregon, State of Oregon Acting By and Through The State Board of Higher Education. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KOAP–TV, Portland, Oregon.
BMPTT–790803IC (K55BU), Milton-Freewater, Oregon, State of Oregon, Board of Higher Education. Req: Change frequency to Channel 61.
BPTT–800109IB (W68AA), Danville, Illinois, Wand Television, Inc. Req: Increase output power to 1000 watts.
BPTT–800328IA (new), Providence, Rhode Island, Boston Heritage Broadcasting, Inc. Req: Channel 48, 674–680 MHz, 100 watts. Primary: KQTV–TV, Boston, Massachusetts.

VHF TV Translator Applications

BPTTV–791001IJ (new), Oregon Canyon, Oregon, John Echave. Req: Channel 11, 198–204 MHz, 1 watt. Primary: KIVI–TV, Nampa, Idaho.
BPTTV–791004IB (new), Sutank, & Rural Areas to the West, Colorado, Garfield County. Req: Channel 4, 66–72 MHz, 5 watts. Primary: KWGN–TV, Denver, Colorado.
BPTTV–791004IC (new), East Elk Creek, Colorado, Garfield County. Req: Channel 8, 180–186 MHz, 1 watt. Primary: KWGN–TV, Denver, Colorado.
BPTTV–791004ID (new), East Elk Creek, Colorado, Garfield County. Req: Channel 10, 192–198 MHz, 1 watt. Primary: KRMA–TV, Denver, Colorado.
BPTTV–791004IE (new), Grand Valley, Colorado, Garfield County. Req: Channel 11, 198–204 MHz, 5 watts. Primary: KWGN–TV, Denver, Colorado.
BPTTV–791004IF (new), Suntank & Rural Areas to the West, Colorado, Garfield County. Req: Channel 12, 204–210 MHz, 5 watts. Primary: KRMA–TV, Denver, Colorado.
BPTTV–791004IG (new), Grand Valley, Colorado, Garfield County. Req: Channel 13, 210–216 MHz, 10 watts. Primary: KRMA–TV, Denver, Colorado.
BPTTV–791012IB (new), Merrill/Malin, Oregon, Southern Oregon Education Company. Req: Channel 4, 66–72 MHz, 5 watts. Primary: KSYS–TV, Medford, Oregon.
BPTTV–791015IG (new), Lordsburg, New Mexico, Regents of New Mexico State University. Req: Channel 2, 54–60 MHz, 10 watts. Primary: KRWG–TV, Las Cruces, New Mexico.
BPTTV–791025IC (new), Greasewood, Arizona, Greasewood Community Club. Req: Channel 8, 180–186 MHz, 1 watt. Primary: KOB–TV, Albuquerque, New Mexico.
BPTTV–800211IK (new), Aguilar, Colorado, University of Southern Colorado. Req: Channel 4, 66–72 MHz, 10 watts. Primary: KTSC–TV, Pueblo, Colorado.
BPTTV–800211IL (new), San Luis, Colorado, University of Southern Colorado. Req: Channel 2, 54–60 MHz, 1 watt. Primary: KTSC–TV, Pueblo, Colorado.
BPTTV–800211IM (new), Del Norte, Colorado, University of Southern Colorado. Req: Channel 2, 54–60 MHz, 10 watts. Primary: KTSC–TV, Pueblo, Colorado.
BPTTV–800211IN (new), La Veta, Colorado, Garfield County. Req: Channel 3, 66–72 MHz, 1 watt. Primary: KTSC–TV, Pueblo, Colorado.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–15811 Filed 5–22–80; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket Nos. 80–181, 80–182, File Numbers 93–A–RL–79, 307–A–L–69]

FM Spears, et al.; Application for Renewal of Aeronautical Advisory Station

In re the application of F. M. Spears d.b.a. Spears Aviation Service, Jackson, Tennessee, PR Docket No. 80–181, Filed Number 93–A–RL–79; Jackson-Madison County Airport Authority, Jackson, Tennessee, for an Aeronautical Advisory Station to serve McKellar Field, Jackson, Tennessee, PR Docket No. 80–182, File Number 307–A–L–69.

Order

Adopted: April 23, 1980.

Released: May 14, 1980.

1. F. M. Spears d.b.a. Spears Aviation Service (hereafter called Spears) has filed an application for renewal of Aeronautical Advisory Station KJB3 located at McKellar Field, Jackson, Tennessee and the Jackson-Madison County Airport Authority has filed an application for a new Aeronautical Advisory Station at McKellar Field. Since § 87.251(a) of our rules provides that only one aeronautical advisory station may be authorized at an airport, the above-captioned applications are mutually exclusive. Accordingly, it is necessary to designate these applications for comparative hearing in order to determine which, if any, should be granted.

2. In view of the foregoing, it is ordered, that pursuant to the provisions of Section 309(e) of the Communications Act of 1934, as amended, and § 0.331 of the Commission's rules, the above-captioned applications are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order on the following comparative issues:

(a) To determine which applicant would provide the public with better aeronautical advisory service based on the following considerations:

(1) Location of the fixed-based operation and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employees in aviation and aviation communications, including but not limited to operation of stations in the Aviation Services (Part 87) that may be or have been authorized to the applicant;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points; and

(7) The availability of the radio facilities to other aviation service organizations;

(b) To determine the manner in which Spears has operated Aeronautical Advisory Station KJB3 and whether such operations were in accordance with the rules governing the operation of this class of station.

(c) To determine in light of the evidence adduced on the foregoing issues which of the applications should be granted.

3. It is further ordered, That the burden of proof and the burden of

proceeding with the introduction of evidence is on each applicant with respect to its application except issue (b) where the burdens are on Spears and issue (c) which is conclusory.

4. It is further ordered, That to avail themselves of an opportunity to be heard, Spears and the Jackson-Madison County Airport Authority pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for hearing and present evidence on the issues specified in this Order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

Federal Communications Commission.

Carlos V. Roberts,

Chief, Private Radio Bureau.

[FR Doc. 80-15810 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Dockets Nos. 80-205 to 80-208; Files Nos. BPH-11091, etc.]

Lee Broadcasting, Inc., et al.; Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: April 24, 1980.
Released: May 14, 1980.

In re applications of Lee Broadcasting, Inc., Fort Myers Beach, Florida, Req: 99.3 MHz, Channel 257, 3.0 kW (H&V), 300 ft., BC Docket No. 80-205, File No. BPH-11091; Phillips Broadcasting of Florida, Inc., Fort Myers Beach, Florida, Req: 99.3 MHz, Channel 257, 3.0 kW (H&V), 300 ft., BC Docket No. 80-206, File No. BPH-780824AB; Local Sound Waves, Inc., Fort Myers Beach, Florida, Req: 99.3 MHz, Channel 257, 3.0 kW (H&V), 300 ft., BC Docket No. 80-207, File No. BPH-780829AC; Nathan L. Goetz, Fort Myers Beach, Florida, Req: 99.3 MHz, Channel 257, 3.0 kW (H&V), 300 ft., BC Docket No. 80-208, File No. BPH-780830AE; for construction permit for new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Lee Broadcasting, Inc. (Lee), Phillips Broadcasting of Florida, Inc. (Phillips), Local Soundwaves, Inc. (Local), and Nathan L. Goetz (Goetz), and related pleadings.

2. *Lee.* Lee has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applications,* 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears that the applicant has failed to survey leaders of a significant population group set forth in its demographic study, as required by Questions and Answers 10, 13(a) and 16 of the *Primer.* Specifically, Lee has failed to survey leaders of the elderly whereas the application states that "the 65 and over age group is the largest and fastest-growing segment in Southwest Florida. Therefore, a limited ascertainment issue will be specified.

3. Lee has requested that grant of the construction permit be conditioned on divestiture of its existing broadcast interests. Lee's only remaining broadcast interest is station WACI in Fort Myers, Florida. (See *Other Matters,* below.) In the event Lee's application is granted, the construction permit will be conditioned in that manner.

4. *Phillips.* Analysis of the financial data submitted by applicant reveals that $93,496.70 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$3,521.80
Equipment payments with interest	30,674.90
Land	5,000.00
Building	8,000.00
Miscellaneous	20,300.00
Operating Costs (three months)	26,000.00
Total	93,496.70

Phillips plans to finance construction and operation with the following funds: (i) $803.26 in existing capital, (ii) an $80,000 bank loan of which $72,000 net will be available to the applicant, and (iii) a $20,000 loan from George W. Phillips. Analysis of Mr. Phillip's balance sheet reveals that current liquid assets of $44,490, exceed current liabilities of $43,158 by $1,332, the extent to which Mr. Phillips can contribute to the applicant. Therefore, applicant has only shown $74,135.26 available to meet a commitment of $93,496.70. Accordingly, a limited financial issue will be specified.

5. *Other Matters.* Lee amended its application twice after August 23, 1979, the deadline for filing amendments as a matter of right. Both amendments contain information concerning the transfer of control of stations WBEX and WBEX-FM in Chillicothe, Ohio, owned by Shawnee Broadcasting Company, 50.2 percent parent of Lee. Local filed conditional oppositions to the amendments opposing the consideration of these amendments as to Lee's comparative position on diversification and claimed that the amendments should be considered solely for purposes of disclosure under § 1.65 of the Commission's rules. In reply, Lee argued that its August 23, 1979 amendment stated its intention to divest itself and its principals (Shawnee is wholly owned by Truman A. Morris, President of Lee) of all broadcast interests prior to any grant of a construction permit. Since Lee indicated its intention to dispose of its other interests prior to the amendment deadline, the amendments will be accepted and any grant to Lee will be conditioned on its sale of its remaining broadcast interest, WCAI. An amendment by Phillips is also accepted.

6. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Lee interviewed leaders of the elderly in Fort Myers Beach, Florida.

2. To determine with respect to Phillips:

(a) The source and availability of additional funds over and above the $74,135 indicated; and

(b) Whether, light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, would best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered that, in the event of a grant of the application of Lee, the construction permit shall contain a condition that program tests will not be authorized until the permittee has shown that Lee has divested itself of all interest in, and

severed all connections with, station WCAI, Fort Myers, Florida.

10. It is further ordered, that the petitions for leave to amend filed by Lee and Phillips are granted and the corresponding amendments are accepted.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-15808 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80-209, 80-210; File Nos. BPH-10907, BPH-781128AC]

R & R Associates, Inc. and Tri City Broadcasting, Inc.; Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: May 2, 1980.
Released: May 14, 1980.

In re applications of R & R Associates, Inc., Craig, Colorado, Req: 102.5 MHz, Channel #273, 100 kW (H&V) 879 feet, BC Docket No. 80-209, File No. BPH-10907; Tri City Broadcasting, Inc., Craig, Colorado, Req: 102.5 MHz, Channel #273, 100 kW (H&V) 1259 feet, BC Docket No. 80-210, File No. BPH-781128Ac; for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (a) The above-captioned mutually exclusive applications of R&R Association, Inc. (R&R) and Tri City Broadcasting, Inc. (Tri City); (b) a petition to dismiss filed by the Tri City; (c) a petition to specify issues filed by R&R, and (d) related pleadings thereto. [1]

2. *R&R.* The applicant's ascertainment showing is not in substantial compliance with the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). Question and Answer 29 requires that the applicant give "the description and anticipated time segment, duration, and frequency of broadcast of the program or program series and the community problem or problems which are to be treated by it." An applicant's proposed programming must address the needs of the community. R&R proposed four programs but did not indicate the community problems to be adddressed by these programs. Three of these proposed programs originate nationally and do not specifically focus on the problems of Craig. The only locally originated program proposed by the applicant does not specify the anticipated time, duration, frequency or indicate the community problems to be addressed. R&R merely indicates that "this will be an interview show with applicant's new staff". Accordingly, a limited ascertainment issue will be specified against R&R.

3. R&R indicates that it plans to employ eight people at its proposed facility. The applicant has not stated whether any of its employees will be part-time. Section 73.2080 of the Commission's rules requires that a program designed to provide equal employment opportunities be filed with the FCC by any station having 5 or more full-time employees. The applicant has failed to file such a program. Accordingly, an issue will be specified.

4. *Tri City.* Tri City's ascertainment survey is in substantial compliance with the *Primer* , although the applicant failed to state the dates that its general public survey was held as required by Question and Answer 2 and 15. As a result, no ascertainment issue will be specified.

5. *Other Matters.* On February 16, 1969, Tri City petitioned the Commission to dismiss R&R's application for violation of § 73.240(a) of the Rules. In R&R's application, as originally filed, Robert F. Sweeney is listed as a 50% stockholder of R&R and owner of Northwest Colorado Publishing, Inc., publisher of two newspaper in Craig, Colorado. The owner 50% stockholder is Royal Maxwell. On March 15, 1979, R&R amended its application to reflect the transfer of Mr. Sweeney's 50% interest to Homer and Beverly Wilson. In a "Motion to Strike Amendment to R&R Associates", filed March 28,1979, Tri-City argued that the transfer to the Wilsons constituted a "major change" pursuant to § 1.573(b) thus requiring the assignment of a new file number and return of R&R's application to the processing line.[2] Tri City reasoned that since the cut-off date for filing competing applications was January 17, 1979, acceptance of the March 15 amendment must necessarily result in the dismissal of R&R's application. On April 17, 1979, R&R amended its application to reflect a further transfer of stock increasing the interest of Royal Maxwell from 50% to 51% and giving the Wilsons a 49% interest. By this action, Mr. Maxwell acquired positive control of R&R. In *Barnes Enterprises, Inc.*, 55 FCC 2d 721, 725 n. 4, 35 RR 2d 176, n. 4 (1975), the Commission determined that where an existing stockholder with negative control (50%) acquires postive control, the application for consent to the transfer may be filed on Form 316 (short form) rather than on Form 315. *See also Gaffney Broadcasting, Inc.*, 35 RR 1067 (1975) and *In Re Charles Esposito*, 45 RR 2d 755 (Broadcast Bureau, 1979). As a result of its amendments viewed in their totality, R&R increased the ownership interest of an existing stockholder from negative to positive (51%) control and brought in two new minority stockholders holding 49% of the stock. Since the net effect would not require a filing of a long form transfer application, R&R's amendments do not effect a major change pursuant to § 1.573(b) and Tri City's petition to dismiss will be denied.

6. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1

[1] The R&R application was tendered for filing on December 14, 1977, and appeared on public notice of cut-off in November 1978. Accordingly, the amendment and predesignation issue pleadings procedures of former §§ 1.522 and 1.584 of the rules were applicable and the parties filed numerous issue and amendment pleadings. However, pursuant to the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part I of the Commission's rules*, 72 FCC 2d 202, 45 RR 2d 1220 (1979), which directed the deletion of all issue pleadings in pending cases, the matters sought to be raised by the parties in issue pleadings have been considered herein only to the extent they relate to issues specifically included in this Order. Accordingly, an opportunity to seek to raise any allegations contained in the issue pleadings which have not been discussed herein will be afforded the parties post designation pursuant to § 1.229.

[2] Section 1.573(b) of the Commission's rules requires the assignment of a new file number of an application upon a voluntary transfer of control—one for which an application for Commission consent would have to be filed on Form 315.

mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the broadcast matter proposed by R&R Associates, Inc., is responsive to the community needs and problems ascertained by its survey.

2. To determine whether R&R has complied with § 73.2080 of the rules regarding equal employment opportunity.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

9. It is further ordered, that the petition to dismiss filed by Tri-City is denied.

10. It is further ordered, that the petitions for leave to amend filed by R&R and Tri-City are granted, and the corresponding amendments are accepted.

11. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-15809 Filed 5-22-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-620-DR]

Missouri Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA-620-DR), dated May 15, 1980, and related determinations.

DATED: May 15, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 634-7848.

NOTICE: Pursuant to the authority vested in the Director of the Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143), notice is hereby given that, in a letter of May 15, 1980, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms and tornadoes beginning on May 12, 1980, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Missouri.

The time period prescribed for the implementation of Section 313(a), Priority to Certain Applications for Public Facility and Public Housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. David R. Ruby of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following area of the State of Missouri to have been affected adversely by this declared major disaster.

Pettis County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-15838 Filed 5-22-80; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Cancellation of Meeting

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-462) notice was published in 45 FR 31492 of May 13 1980, that a meeting of the Federal Prevailing Rate Advisory Committee would be held on June 5, 1980. Notice is hereby given that the meeting scheduled for that date has been cancelled.

Jerome H. Ross

Chairman, Federal Prevailing Rate Advisory Committee.

May 16, 1980.

[FR Do. 80-15836 Filed 5-22-80; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies, Notice of Proposed De Novo Nonbank Activities; Correction

This notice corrects a previous **Federal Register** document (FR Doc. 80-1455) published at page 31203 of the issue for Monday, May 12, 1980. The final date for receipt of comments is corrected to read June 12, 1980.

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce

benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 12, 1980.

A. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

U.S. BANCORP, Portland, Oregon (financing and insurance activities; Oregon): to engage through its subsidiary, U.S. Creditcorp., in making, acquiring and servicing of loans and other extensions of credit for its own account or for the account of others, including the making of consumer installment loans, purchasing consumer installment and real estate sales finance contracts and evidences of debt and making industrial loans, and acting as an insurance agent for the sale of credit life and disability insurance directly related to extensions of credit by U.S. Creditcorp. These activities would be conducted from an office in Salem, Oregon, serving the counties of Marion, Benton, Linn, Lincoln, Polk, Clackamas and Yamhill, Oregon.

B. *Other Reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15849 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

Bankshares of Park County, Inc.; Formation of Bank Holding Company

Bankshares of Park County, Inc., Bailey, Colorado, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Bank of Park County, Bailey, Colorado. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15851 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

Central Bancompany; Acquisition of Bank

Central Bancompany, Jefferson City, Missouri, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 74.7 per cent or more of the voting shares of Empire Bank, Springfield, Missouri. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15852 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

Drexel Holding Company; Formation of Bank Holding Company

Drexel Holding Company, Chicago, Illinois, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 82 percent or more of the voting shares of Drexel National Bank, Chicago, Illinois. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15853 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

First National Cincinnati Corp.; Acquisition of Bank

First National Cincinnati Corporation, Cincinnati, Ohio, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of the successor by acquisition to The Portsmouth Banking Company, Portsmouth, Ohio. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15854 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

Liberty National Bancorp, Inc.; Formation of Bank Holding Company

Liberty National Bancorp, Inc., Louisville, Kentucky, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Liberty National Bank and Trust Company. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the reserve Bank, to be received not later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn

Assistant Secretary of the Board

[FR Doc. 80-15855 Filed 5-22-80; 8:45 am]

Billing Code 6210-01-M

Liberty National Corp.; Proposed Retention of 50 Percent Interest in Liberty-Heller Factors, Inc.

Liberty National Corporation, Oklahoma City, Oklahoma, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain 50% of the voting shares of Liberty-Heller Factors, Inc., Oklahoma City, Oklahoma.

Applicant states that the subsidiary engages in business lending and financing inventories for small and medium size companies. These activities are performed from offices of Applicant's subsidiary in Oklahoma City, Oklahoma, and the geographic area served includes the State of Oklahoma. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits of the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 13, 1980.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15856 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

Mills County Bancorp.; Formation of Bank Holding Company

Mills County Bancorp., Glenwood, Iowa, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 96 percent of the voting shares of Mills County State Bank, Glenwood, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15850 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

U.S. Bancorp; Acquisition of Bank

U.S. Bancorp, Portland, Oregon, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 per cent or more of the voting shares of The Bank of Milwaukie, Milwaukie, Oregon, a proposed new bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15859 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

Wood Lake Corp.; Proposed Retention of Wood Lake Insurance Agency

Wood Lake Corporation, Wood Lake, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(C)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain Wood Lake Insurance Agency (a division of Wood Lake Corporation), Wood Lake, Minnesota.

Applicant states that the agency engages in general insurance sales and activities to businesses and consumers in a town of less than 5,000. These activites are peformed from offices of Applicant in Wood Lake, Minnesota, and the geographic area served includes an area within a six mile radius of the town of Wood Lake. Such activites have been specified by the Board in section

225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 16, 1980.

Board of Governors of the Federal Reserve System, May 15, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15860 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

M B Group Inc.; Formation of Bank Holding Company

M B Group Inc., Marathon, Florida, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 82 per cent or more of the voting shares of The Marathon Bank, Marathon, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15857 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

Southern Banks of Florida; Formation of Bank Holding Company

Southern Banks of Florida, Gainesville, Florida, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842 (a)(1)) to become a bank holding company by acquiring 99.1 per cent or more of the voting shares of High Springs Bank, High Springs, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 16, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15858 Filed 5-22-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N-0190]

Light Sources; Biological Effects and Measurement; Open Meeting

AGENCY: Food and Drug Administration

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces an open meeting to discuss research efforts sponsored by the agency's Bureau of Radiological Health (BRH) in the area of biological effects and measurement of light sources.

DATE: The meeting will be held June 9 and 10, 1980; sessions will convene at 9 a.m. each day.

ADDRESS: The meeting will be held at the Bureau of Radiological Health, Rm. 416, 12720 Twinbrook Parkway, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: DeWitt G. Hazzard, Bureau of Radiological Health (HFX-14), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4190.

SUPPLEMENTARY INFORMATION: Presentations will be divided between intramural projects and extramural research supported through grants, contracts, and interagency agreements. To the extent that time permits, opportunity will be provided for comments by interested persons.

Proceedings of the open meeting will be published as a BRH technical report. Availability of the report will be announced in the BRH Bulletin at a later date.

Dated: May 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-15783 Filed 5-20-80; 12:08 pm]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Notice of Receipt of Application

Applicant: Mr. Richard S. Funk, Dept. of Biological Sciences, Illinois State University, Normal, IL 61761.

The applicant requests a permit to import 2.2 Jamaican boas *(Epicrates subflavus)* and 2.2 Puerto Rican boas *(Epicrates inornatus)* from Mr. Tom Huff, Reptile Breeding Foundation, Picton, Ontario, Canada, for propagation purposes.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington D.C. 20240.

This application has been assigned file number PRT 2-7052. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to

the file number when submitting comments.

Dated: May 20, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-15911 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Mark Runnals, 220 Pine St., Holyoke, MA 01040.

The applicant requests a permit to import up to 6 (total) male and female turquoise (*Neophema pulchella*) and scarlet-chested (*Neophema splendida*) parakeets from Holland and Germany for the purpose of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-6532. Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: May 20, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-15912 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Species Permit; Notice of Receipt of Application

Applicant: Virgin Island Bureau of Fish & Wildlife, Frederiksted, St. Croix.

The applicant requests a permit to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*) and leatherback (*Dermochelys coriacea*) sea turtles for tagging studies. No sea turtles will be intentionally killed under this permit.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-6582. Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: May 20, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-15913 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-55-M

Availability of Environmental Assessments for Wildlife Restoration Projects

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability for inspection and public comment.

SUMMARY: This notice provides a listing of Environmental Assessments available for public review to supplement those previously listed in the **Federal Register** July 20, August 3, September 6, October 5, November 16, and December 27, 1979, and March 7 and April 3, 1980. The Assessments and Findings of No Significant Impact were prepared on certain projects conducted by State fish and wildlife agencies under the Federal Aid in Wildlife Restoration program. The public is invited to comment, and information is provided on the locations at which the documents may be reviewed.

DATE: Comments must be received at the locations indicated by June 23, 1980.

ADDRESSES: The assessments are available for inspection at the following locations:

FWS Federal Aid Office, 1000 N. Glebe Road, Arlington, Virginia 22201
Region 1, FWS, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232
Region 2, FWS, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103
Region 3, FWS, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111
Region 4, FWS, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303
Region 5, FWS, 1 Gateway Center, Suite 700, Newton Corners, Massachusetts 02158
Region 6, FWS, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225
Alaska Area Office, FWS, 1011 E. Tudor Road, Anchorage, Alaska 99507

Central headquarters office of the State fish and wildlife agency.

Interested persons are invited to submit comments to the appropriate Regional Director at the above regional addresses within 30 days. Copies of the assessment may be obtained at the Regional Offices upon payment of reasonable reproduction costs pursuant to 43 CFR, Part 2, Appendix A. Copies of any Finding of No Significant Impact will be provided free of cost.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703-235-1526.

SUPPLEMENTARY INFORMATION: On June 26, 1979, the U.S. District Court for the District of Columbia issued an order dismissing Civil Action No. 78-430 involving the Federal Aid in Wildlife Restoration program. The dismissal effected an agreement by plaintiffs and defendants which included a provision that the Fish and Wildlife Service would publish in the **Federal Register** a notice of availability of certain Environmental Assessments for inspection and public comment. Pursuant to the stipulated agreement, this notice lists Environmental Assessments prepared to date and will be supplemented as other assessments are prepared.

The principal author of this notice is Dr. Robert J. Sousa, U.S. Fish and Wildlife Service, Division of Federal Aid, Washington, D.C. 20240, telephone 703-235-1526.

Notice is hereby given of availability for inspection and comment of environmental assessments for the following Federal Aid projects funded in part by the U.S. Fish and Wildlife Service (FWS) under the Pittman-Robertson Federal Aid in Wildlife Restoration Act, 16 U.S.C. 669 et seq.: (Activities listed are not exclusive.)

Region 6

Utah W-136-D (Portions of this project were formerly under Utah W-107D.)

This project provides for research, development, and maintenance activities in selected pinyon/juniper rangeland throughout the State. The project is designed to improve and protect the vegetation on critical big game winter ranges, with secondary benefits for nongame species. Activities proposed include development of fences, signs, firebreaks, springs for wildlife watering, range improvements, and reseeding. Routine maintenance of existing roads, fences, signs and firebreaks will be performed. Research on the range quality and its potential for improvement are proposed.

Addendum—Region 6

Utah W–117–LDR (Previously cited in October 5, 1979, **Federal Register**, p. 57520.)

This Supplemental EA provides for Federal Aid participation in research, development, and maintenance activities on 18 Waterfowl Management Areas statewide totalling 229,000 acres. Research includes basic survey and inventory of waterfowl to determine population status and trends, mortality, harvests, and migration patterns. Routine census and data collection techniques are used such as aerial and ground surveys, hunter bag checks and questionnaires. Development and maintenance of habitat and facilities includes: seeding of herbaceous crops for waterfowl food and cover, water level management, tree and shrub plantings on selected upland areas, repair and replacement of waterfowl nesting structures, upkeep of buildings, dams, dikes, canals and channels, bridges, roads and trails, fences, signs and public use facilities.

Dated: May 20, 1980.

Robert S. Cook,

Acting Director, U.S. Fish & Wildlife Service.

[FR Doc. 80–15781 Filed 5–22–80; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

U.S. Geological Survey's Best Available and Safest Technology Program for Offshore Oil and Gas Operations

The purpose of this Notice is to advise the public of the availability of a booklet describing the U.S. Geological Survey's (USGS) Best Available and Safety Technology (BAST) program.

The USGS BAST program is a result of the OCS Lands Act Amendments of 1978 and comments received in regard to the USGS **Federal Register** Notice, Volume 44, No. 28, February 8, 1979, and a subsequent study by the Marine Board of the National Research Council, entitled "Implementing Best Available and Safest Technologies For Offshore Oil and Gas Operations," completed in September 1979.

The BAST program provides a systematic approach toward the incorporation of various program elements into an overall OCS regulatory scheme. Recognizing the evolutionary nature of the BAST program, as improvements, additions, and advances are made in safety concepts and technology, changes will be made to the existing body of regulations, Orders, and standards which govern the extraction of minerals from OCS leased lands. Although many BAST standards are applicable to the entire OCS, it is recognized that the application of BAST must be tailored to each Region's geological and environmental condition, and its application must also be suited to the type of operation.

The booklet entitled "Program to Assure the Use of Best Available and Safest Technologies on the Outer Continental Shelf" describes the USGS program for BAST in four components, i.e.: where the BAST requirement is found, how BAST is to be applied, information relative to BAST determinations, and organization and procedures to incorporate BAST into the regulatory program.

Single copies of the booklet are free upon request and can be obtained by writing the U.S. Geological Survey, Deputy Division Chief, Offshore Minerals Regulation, National Center—Mail Stop 640, Reston, Virginia 22092.

Dated: May 19, 1980.

Robert R. Rioux,

Deputy Division Chief, Offshore Minerals Regulation Conservation Division.

[FR Doc. 80–15839 Filed 5–22–80; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Tulalip Tribes Fish Hatchery; Intent To Prepare and Consider an Environmental Statement and Notice of Scoping Meeting

The Department of Interior, Bureau of Indian Affairs (BIA), Portland Area Office, the lead Federal Agency, will be preparing an environmental impact statement (EIS) on a proposal to develop a fish hatchery and related facilities on the Tulalip Indian Reservation, approximately ten miles north of Everett, Washington.

If initiated, the proposal will include development of a hatchery building, laboratory, employee residences, parking, landscaping, utilities, and facilities for egg collection, incubation, rearing, fingerling distribution, adult fish holding, maintenance, and wastewater treatment. The preliminary objective of the facilities is to raise approximately 15 million chum salmon, 1.2 million coho, and 1.5 million fall chinook per year.

Information obtained from the EIS will assist BIA line officials in making a Federal decision concerning construction and operations of this hatchery.

The EIS will address alternative sites for the facilities on the Reservation, conventional and innovative rearing techniques, use of up to approximately 34 cfs of ground and surface waters at peak demand, wastewater treatment and discharge, coordination of hatchery raised salmon with the timing of native outmigrant juveniles and returning adult stocks as well as the effects of such a development on the Tulalip Indian Reservation community and adjacent areas.

Initial issues and concerns identified by the BIA, the Tulalip Tribes, consultants to the Tribes, and Washington Department of Fisheries, include availability of sufficient water, competition and predation between hatchery and native fish, and economic effect on the Tribal fishery.

Pursuant to the Council on Evironmental Quality National Environmental Policy Act regulations, §§ 1501.7(a)(1), 1506.6 and 1508.22, a public meeting will be held for the purpose of additional scoping (determining the scope of issues to be addressed, and for identifying the significant issues related to the proposed action) for the environmental statement. The meeting will be on July 8, 1980, at 2:00 p.m. in the Tribal Community Center, 6800 Totum Beach Road, on the Tulalip Indian Reservation, Washington.

Interested parties may attend this meeting or submit written comments to this office.

For further information concerning the meeting, the proposed action, or the environmental impact statement, contact: Jack Hunt, Land Services Officer, Portland Area Office, Bureau of Indian Affairs, P.O. Box 3785, Portland, Oregon 97208. Telephone number 503–231–6744 (FTS 8–429–6744).

Vincent Little,

Area Director.

[FR Doc. 80–15791 Filed 5–22–80; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Multiple Use Advisory Council; Meeting

Notice is hereby given, in accordance with Pub. L. 94–579 and 43 CFR Part 1780, that a meeting of the Idaho Falls District Multiple Use Advisory Council will be held on Wednesday, July 9, 1980, at 9:00 a.m., at the Bureau of Land Management Office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Agenda for the meeting will include:

1. introduction and biographical sketch of members;
2. discussion of the function of the Council;
3. election of officers;
4. overview of BLM in general, Idaho Falls District in particular, and major programs by Resource Area, to include,

but not be limited to, Diamond Creek Environmental Assessment, Little Lost-Birch Creek, Big Desert and Big Lost-Mackay Rangeland Management Environmental Impact Statements, Omitted Lands, South Fork of Snake River, Great Rift, and Medicine Lodge Management Framework Plan;

5. presentation on Sagebrush Rebellion;

6. establishment of committees;

7. arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:30 a.m. and 12:00 noon, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by July 2, 1980. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: May 16, 1980.

O'dell A. Frandsen,

District Manager.

[FR Doc. 80-15793 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-84-M

Preplanning Activities for the Management Framework Plans; Divide and Overland Resource Areas, Rawlins District, Wyoming

Pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM), Rawlins District has begun preparation for Management Framework Plan (MFP) updates to guide and control future management actions on the public lands within the Divide and Overland Resource Areas. The MFP's will be completed in 1982.

The Divide and Overland Resource Areas are located in south-central Wyoming. They include approximately 4 million acres in Carbon and Sweetwater counties; 35 percent of the land surface is privately owned, four percent is state land, 60 percent (approximately 2.3 million acres) is public land administered by BLM, and one percent is administered by other federal agencies.

The Divide Resource Area is bounded on the east by the North Platte River, on the west by Rock Springs BLM District, on the south by Interstate Highway 80, and on the north by the Casper BLM District and the Lander BLM Resource Area.

The Overland Resource Area is bounded on the east by the North Platte River, on the west by the Rock Springs BLM District, on the south by the Colorado state line, and on the north by Interstate Highway 80.

The plans will be comprehensive land use plans which address multiple resource uses, levels of use, resource condition goals, and general management practices needed to achieve these goals. The MFP will also establish a sequence for implementation, the necessary support actions, and the need for more detailed or specific plans.

Public Involvement will be an essential component of the MFP process. As a public resource management agency, BLM will ensure that attitudes, interests, and desires of local, regional and national groups are considered throughout the decision making process. News releases which explain the planning process and ask the general public for issues they wish to have addressed will be printed in local and regional newspapers.

In order to focus the direction of the MFP at the outset of the process, the public, other federal agencies, and state and local governments are encouraged to assist in identifying the issues that should be addressed by the MFP.

Some of the general planning topics expected to generate issues include: rangeland uses, present and future developments for energy minerals, land development, recreation uses, cultural resources, wildlife resources, social and economic conditions, public access, rights-of-way, and soil, air, and water resources.

An interdisciplinary team will be formed to complete the MFP's. Disciplines to be represented will include:

Geology, Realty, Range Conservation, Archeology, Economics, Fire Management, Watershed, Hydrology, Wildlife, Recreation, Soils and Access.

If you wish to discuss, review, or obtain copies of planning documents, you may write, call or visit the BLM at the office address below:

Fred Wolf, District Manager

or

Ed Coy, Area Manager, Overland Resource Area

or

Ron Wenker, Area Manager, Divide Resource Area, Rawlins BLM District Office, P.O. Box 670, 1300 Third Street, Rawlins, Wyoming 82301. Telephone (307-324-7171).

Comments and suggestions on issues to be addressed in the MFP's should be submitted to the address as stated by June 30, 1980.

Fred Wolf,

District Manager.

[FR Doc. 80-15792 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Requesting Filing of Existing Surface Owner Consent for Surface Coal Mining

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Filing of existing surface owner consent for surface coal mining.

SUMMARY: This notice is to advise the public that, pursuant to 43 CFR 3427, valid written consent for surface coal mining given by qualified surface owners should be filed with the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming.

This notice applies only to areas identified as acceptable for futher leasing consideration in the Casper Distrcit's Highlight Review Area, Powder River Management Framework Plan in eastern Wyoming.

The consent documents should contain evidence that qualified surface owners have agreed: (1) to permit a coal operator to enter and commence surface mining of Federal coal; (2) to describe any financial or other consideration given or promised in return for the permission, including in-kind considerations; (3) to describe any consideration given in terms of type or method of operation or reclamation for the area; (4) to provide any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and (5) to provide a full and accurate description of the area covered by the permission.

These consents, when filed, will be used by the Powder River Regional Coal Team to assist in determining, during the tract delineaton, ranking, and selection process, the competitive nature of the possible lease tracts.

DATES: All surface owner consents for the Highlight Review Area within the State of Wyoming of the Powder River Coal Region should be received by the Bureau of Land Management, Wyoming State Office, by June 16, 1980, in order to assist in the tract delineation. However, consent or evidence of written consent shall be filed 30 working days prior to the publication of lease sale notice of the lands to which it applies. It shall be the responsibilities of parties intending

to file consent to be aware of pending lease sale notice dates.

ADDRESS: Written consents should be sent to: State Director (933), Bureau of Land Management, P. O. Box 1828, Cheyenne, WY 82001.

Legal descriptions of areas acceptable for further coal leasing consideration in the Highlight Review Area may be obtained from: Mr. Stan McKee, Powder River Project Manager, Bureau of Land Management, Division of Resources (933), P. O. Box 1828, Cheyenne, Wyoming 82001. (Telephone: AC 307–778–2220 extension 2413).

FOR FURTHER INFORMATION CONTACT: Mr. James Edlefsen or Mr. Stan McKee at the address shown above.

Maxwell T. Lieurance,

State Director.

[FR Doc. 80–15861 Filed 5–22–80; 8:45 am]

BILLING CODE 4310–84–M

Nevada Elko District; Preparation of Resource Management Plan; Wells Resource Area

Pursuant to the Federal Land Policy and Management Act of 1976 and the Code of Federal Regulations, Title 43, Part 1601.3, the Wells Resource Area of the Elko, Nevada, District hereby gives notice of its intent to prepare a Resource Management Plan (RMP) for the Wells Resource Area. Located in Elko County in northeastern Nevada, the Wells Resource Area encompasses an area of 5,479,000 acres, more than 80% of which is public land. The area is bordered on the north by Idaho, on the east by Utah, on the south by White Pine County, Nevada, and on the west by the Elko Resource Area of the Elko District.

The RMP is a comprehensive land use plan which identifies goals for resource condition and use levels, program constraints, and measures required to implement management recommendations. The RMP also outlines needs for more detailed or specific management plans.

Issues preliminarily identified to be addressed in the plan include management of vegetation use on public lands, public land disposal and exchanges, the Desert Land Entry program, mineral prospecting and development, and the wilderness program. Extensive public participation will be sought to clarify and develop these and other management concerns. Public comment will also be solicited following publication of draft planning criteria, after publication of draft RMP (and associated Environmental Impact Statement), after publication of final RMP, and in the event of significant change(s) made to the plan as a result of action on a protest. Public involvement activities will include requests for written comments, open houses, workshops, formal public meetings, tours, and similar events deemed useful for stimulating and facilitating desired levels of public participation.

An interdisciplinary team will be formed to examine all identified land use issues, and to formulate alternative management plans. This team will include representatives of the following fields: range science, aquatic and terrestrial wildlife biology, soil science, geology, archaeology, recreation and wilderness, hydrology, social economics, forestry, realty, and fire management.

All persons, groups, and other government agencies with an interest in the planning area and its future management are requested to make their comments or recommendations on issues on or before June 23, 1980. Comments and requests for further information should be directed to Lee Wangsgard, Area Manager, Wells Resource Area, at the Elko District Office, BLM, 2002 Idaho St., P.O. Box 831, Elko, NV 89801 (telephone 702–738–4071). Planning documents and other pertinent materials may be examined at the Elko District Office Between 7:30 a.m. and 4:30 p.m. weekdays.

Rodney Harris,

District Manager.

[FR Doc. 80–15794 Filed 5–22–80; 8:45 a.m.]

BILLING CODE 4310–84–M

Rawlins District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Rawlins District Grazing Advisory Board will be held on June 26, 1980.

The meeting will begin at 10:00 a.m. in the annex conference room of the Rawlins District Office, Bureau of Land Management, 1300 N. Third Street, Rawlins, Wyoming 82301.

The agenda for the meeting will include: (1) Election of officers; (2) Coordination and consultation procedures for development of fiscal year 1980 or 81 allotment management plans; (3) Review fiscal year 1980 allotment management plan schedule and fiscal year 1980 range improvement program; and (4) Recommendations for fiscal year 1981 range improvement projects.

The meeting will be open to the public. Interested persons may make oral statements before the board or file written statements for the Board's consideration. Persons wishing to make an oral statement are asked to notify the District Manager, 1300 N. Third Street, P.O. Box 670, Rawlins, Wyoming 82301 by close of business on June 24, 1980.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction on or before June 23, 1980.

Fred Wolf,

District Manager.

[FR Doc. 80–15796 Filed 5–22–80; 8:45 am]

BILLING CODE 4310–84–M

Salt Lake District Grazing Advisory Board, Meeting

Notice is hereby given in accordance with Public Law 92–463, that a meeting of the Salt Lake District Grazing Advisory Board will be held on June 18 and 19, 1980.

The meeting will begin at 10:00 A.M. in the Bureau of Land Management field office in Randolph, Utah.

The purpose of the meeting will be to give advice and recommendations for the Allotment Management Plan development and a status report on the District's Environmental Impact Statement progress.

The proposed agenda will be as follows:

June 18—Northern Sub-committee meeting
- 10:00 A.M.—Review AMP's and concepts
- Noon—Lunch
- 1:00 to 5:00 P.M.—Tour allotments to be put under AMPs
- 5:30 to 6:30 P.M.—Supper
- 7:00 to 9:00 P.M.—Give written recommendations

June 19—
- 8:00 to 10:00 A.M.—Finalize recommendations
- 10:00 A.M.—Tour with public—Stew Hopkins Ranch east of Woodruff
- Noon—Lunch
- 1:00 to 2:00 P.M.—Drive to Hopkins summer range in Echo Canyon
- 2:00 to 5:00 P.M.—Tour summer range
- 5:00 P.M.—Adjourn—Return home.

The meeting is open to the public. Interested persons may make oral statements between 8:00 and 10:00 A.M., June 19, 1980, or file written statements for Board's consideration. Anyone wishing to make oral statements must notify the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119, by June 10, 1980. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager.

Summary minutes of the Board will be maintained at the District Office and be

available for public inspection and reproduction (during business hours) within 30 days following the meeting.

Dated: May 15, 1980.

W. Cliff Yardley,

Acting District Manager.

[FR Doc. 80-15795 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

Bureau of Indian Affairs

Geological Survey

Memorandum of Understanding

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM); Bureau of Indian Affairs (BIA); and Geological Survey (GS).

ACTION: Notice of Availability of Memorandum of Understanding (MOU).

SUMMARY: Notice is given of the availability for public review of a document entitled "Memordanum of Understanding, BIA–GS–OSM, Management of Coal Mining on Indian Lands," which was executed May 8, 1980, by the Office of Surface Mining (OSM), Bureau of Indian Affairs (BIA), and Geological Survey (GS). The MOU provides a reference framework and procedural arrangement by which the BIA, GS and OSM will coordinate and carry out their functions and responsibilities for coal operations on Indian lands.

The MOU addresses only those responsibilities and functions that must be coordinated. It recognizes the role of Indian tribes as coal owners and as government entities having basic authorities and responsibilities for the development and administration of Indian resource programs. The MOU recognizes the lead role of the BIA in the Federal-Indian trust relationship and in securing consultation with the tribes. Uniques situations not adapted to standard procedures set forth in the MOU will be resolved on a case-by-case basis.

ADDRESS: Copies of the document may be obtained from the following offices:

Commissioner, Bureau of Indian Affairs, 18th & C Streets, NW., Washington, D.C. 20240.

Director, Office of Surface Mining, 19th & Constitution Avenue, NW., Washington, D.C. 20240.

Director, Geological Survey, National Center (171), Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT:

BIA—David Harrison (202) 343–5831.

OSM—Donald Maurer (202) 343–5335.

GS—Andrew Bailey (703) 860–7506.

Dated: May 8, 1980.

Joan Davenport,

Assistant Secretary, Energy and Minerals.

Rick Lavis,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 80-15797 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-05-M

Water and Power Resources Service

Creston Steam Electric Station, Creston, Wash.; Intent to Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare an environmental statement jointly with the State of Washington Energy Facility Site Evaluation Council on the proposed Creston Steam Electric Station to be constructed and operated by the Washington Water Power Company. The Creston Steam Electric Station Project is intended to assist in meeting regional energy supply deficiencies projected to occur in the years following 1987.

The proposed project would be located in eastern Washington near the town of Creston and would consist of four 500–MW units and related facilities. Coal for the plant would be shipped by rail from a source in either Montana or Wyoming. Water for the project would be obtained from Franklin D. Roosevelt Lake and piped to the project.

Alternatives to be considered in the environmental statement would include: (1) to take no action, i.e., alternative power sources and the creation of new generating capacity; (2) alternative power sources and generating methods—including nuclear power, oil, natural gas, solar energy, and others; (3) alternative sites; and (4) alternative designs.

Environmental studies and preparation and processing of an environmental impact statement for this proposed project will be in accordance with provisions of the National Environmental Policy Act of 1969 and the Washington State Environmental Policy Act. It will be accomplished under Council on Environmental Quality regulations, published in the **Federal Register** on November 29, 1978, and under Title 463, State of Washington Administrative Code, relating to siting energy facilities. A Memorandum of Agreement between the Department of the Interior and the Washington State Energy Facility Site Evaluation Council has been signed to facilitate the preparation of a joint environmental impact statement.

To insure that the full range of issues related to this proposal are discussed and all significant issues are identified, scoping meetings will be held.

Public Meeting and Scoping Session Schedule

Location, date, time, and place

Creston, WA, June 10, 1980, 7:30 p.m., Creston Public School Auditorium.

Spokane, WA, June 11, 1980, 7:30 p.m., Holiday Inn West, 4212 Sunset Boulevard, Spokane, WA.

Seattle, WA, June 12, 1980, 7:30 p.m., Seattle Center, Northwest Rooms Complex, Chaw Room.

The Department of the Interior invites comments and suggestions on the proposal to insure that all significant issues are identified and discussed in the statement. Interested agencies, organizations, and individuals should write to or contact the Water and Power Resources Service at the address provided below. The contact person will be: Dr. Ronald R. McKown, Project Environmental Officer, Grand Coulee Project Office, Water and Power Resources Service, P.O. Box 620, Grand Coulee, WA 99133, Telephone: 509–633–1360, Extension 508.

Dated: May 16, 1980.

Clifford I. Barrett,

Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-15750 Filed 5-22-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Registers**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should

comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(c) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* any application directly related thereto filed within 30 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: May 14, 1980.

Note.—In MC–F–14305F, Board member Taylor dissents and finds the proposed division of rights to be in impediment. In MC–F–14347, Board member Taylor dissents stating that the proposed division of operating rights would be contrary to the public interest.

Agatha L. Mergenovich,

Secretary.

MC–F–14118, filed January 5, 1980. The purchase by C&E Trucking Co., Inc., of operating rights embraced in transferor Wheeler Freightways certificate No. MC–106679 (Sub-No. 9), was approved by Review Board Number 5 by decision of April 9, 1980 in No. MC–F–14118F subject to publication of this authority in the Federal Register to afford any interested party the opportunity to file a protest within 30 days thereof demonstrating how it might be prejudiced by the transfer. If no protest is filed within 30 days the review board decision will be effective. The operating rights embraced in seller's certificate, No. MC–106679 (Sub-No. 9) authorizing the transportation, over irregular routes, or *gypsum plaster, gypsum wallboard, and gypsum lath,* from points in Clark County, NV, to points in Orange, Riverside, and San Bernardino Counties, CA.

MC–F–14347F, filed March 24, 1980. WILMAR TRUCKING, INC. (Wilmar) (P.O. Box 369, Oaks, PA 19456)—Purchase (Portion)—B & P MOTOR EXPRESS, INC. (B&P) (780 Gross Street, Pittsburgh, PA 15224). Representatives: A. David Millner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006, and John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15216). Wilmar seeks authority to purchase a portion of the interstate operating rights of B & P. Wil-Ford Incorporated, a non-carrier and the sole stockholder of Wilmar, and in turn, William J. Ford, the sole stockholder of Wil-Ford Incorporation, seek authority to acquire control of said rights through the transaction. Wilmar is purchasing that portion of the interstate operating rights contained in B & P's certificate in MC–1936 which authorizes the transportation of *general commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Baltimore and Elkton, MD, serving all intermediate points: from Baltimore over U.S. Hwy 40 to Elkton and return over the same route, restricted (1) against local service between Baltimore and Elkton, MD, and all intermediate points, and (2) for joinder purposes only. Wilmar is authorized to operate as a motor common carrier in PA, NJ, NY, DE, MD, VA, and DC, pursuant to certificates issued in MC–61624 and sub-numbers thereunder, as granted in MC–F–13189F. Wilmar is affiliated with De-Pen Line, Inc., a motor common carrier pursuant to certificates issued in MC–123159 and sub-numbers thereunder and authority awarded in MC–F–13862F and MC–F–13967F. Condition: Wil-Ford Incorporated, the parent of Wilmar, is a non-carrier with investments and functions primarily related to transportation. Accordingly, concurrently with consummation of the transaction authorized in this proceeding, Wil-Ford Incorporated will be considered a motor carrier within the meaning of 49 U.S.C. 11348 of Subtitle IV. It will, therefore, be subject to the applicable provisions of 49 U.S.C. subchapter III of chapter 111 relating to reporting and accounting and of 49 U.S.C. 11302 relating to the issuance of securities. (Hearing site: Philadelphia, PA.)

Note.—Application for temporary authority has been filed.

MC–F–14305F, filed January 25, 1980. PACIFIC INTERMOUNTAIN EXPRESS CO. (Pacific) (25 North Via Monte, Walnut Creek, CA 94598)—Purchase (Portion)— TWIN CITY FREIGHT, INC. (Twin City) (2550 Long Lake Road, Roseville, MN 55113). Representatives: Roland Rice, 501 Perpetual Bldg., 1111 E Street, NW, Washington, DC 20004; Alan Foss, 502 First National Bank Bldg., Fargo, ND 58102; and H. Beatty Chadwick, 1500 Walnut Street, Philadelphia, PA 19102. Pacific seeks authority to purchase a portion of the

interstate operating rights of Twin City. I.U. Transportation Services, Inc., a non-carrier and sole stockholder of Pacific, and in turn, I.U. International Corporation, a non-carrier and sole stockholder of I.U. Transportation Services, Inc., both of 1105 N. Market Street, The Wilmington Tower, Wilmington, DE 19801, seek authority to acquire control of said rights through the transaction. Twin City holds authority in MC 111496 (Sub-21) which authorizes the transportation of *general commodities*, with the usual exceptions, between St. Cloud and Duluth, MN: from St. Cloud over MN Hwy 23 to junction U.S. Hwy 61, then over U.S. Hwy 61 to Duluth, and return over the same route, serving all intermediate points on MN Hwy 23, and restricted against service to any point on U.S. Hwy 61 except the City of Duluth. Pacific is purchasing that portion of Sub-21 between Mora and Duluth, MN: from Mora over MN Hwy 23 to junction U.S. Hwy 61, then over U.S. Hwy 61 to Duluth and return over the same route, serving all intermediate points on MN Hwy 23 except Mora, and serving Mora for purposes of joinder only. Twin City is retaining that portion of Sub-21 between St. Cloud and Mora, over MN Hwy 23, serving all intermediate points and serving Mora as a terminal point. Twin City holds authority in MC 111496 (Sub-25) which authorizes the transportation of *general commodities*, with the usual exceptions, between Minneapolis and Mora, MN, over MN Hwy 65, serving no intermediate points. Pacific is purchasing that portion of Sub-25 between Minneapolis and Mora, MN, over MN Hwy 65, serving no intermediate points and serving Mora for purposes of joinder only. Twin City is retaining that portion of Sub-25 between Minneapolis and Mora, MN, over MN Hwy 65, serving no intermediate points. Pacific is authorized to operate as a motor common carrier in all States in the United States (except AK and HI), pursuant to certificates issued in MC–730 and sub-numbers thereunder. Pacific is also under common control with Ryder Truck Lines, Inc., a motor common carrier pursuant to certificates issued in MC–2900 and sub-numbers thereunder. Condition: I.U. Transportation Services, Inc., the sole stockholder of Pacific, is a non-carrier with its investments and functions primarily related to transportation. Accordingly, concurrently with consummation of the transaction authorized in this proceeding, I.U. Transportation Services, Inc., will be considered a motor carrier within the meaning of 49 U.S.C. § 11348 of subtitle IV. It will therefore, be subject to the applicable provisions of 49 U.S.C. subchapter III of chapter 111 relating to reporting and accounting, and of 49 U.S.C. 11302 relating to the issuance of securities. (Hearing site: Washington, DC, or Minneapolis, MN.)

Note:—(1) Common traversal by buyer and seller of U.S. Hwy 65 would occur between Minneapolis and Mora, MN, but there would be no duplicate service anywhere. (2) Application for temporary authority has been filed.

MC F–14344F, filed March 18, 1980. D'AGATA NATIONAL TRUCKING CO. (D'Agata) (3240 South 61st Street, Philadelphia, PA 19153)—Purchase—HIGHWAY TRANSPORTATION CO., INC. (Highway) (419 Belleview Avenue, Hammonton, NJ 08037). Representative: Leonard A. Jaskiewicz, 1730 M Street, NW. Suite 501, Washington, DC 20036. D'Agata seeks authority to purchase the interstate operating rights of Highway. Joseph A. D'Agata and Joseph G. D'Agata, equal stockholders of D'Agata, seek authority to acquire control of said rights through the transaction. D'Agata is purchasing the interstate operating rights contained in Highway's certificates issued in MC 62904, which authorize the transportation, as a motor common carrier, as follows: (A) *General commodities* (except those of unusual value, Classes A and B explosives, liquors, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), over regular routes (1) between Hammonton, NJ and Philadelphia, PA: from Hammonton over unnumbered highway to junction U.S. Highway 30, then over U.S. Highway 30 to Camden, NJ, and then across the Delaware River to Philadelphia, and return over the same route; and from Hammonton, over unnumbered highway to junction U.S. Highway 322, then over U.S. Highway 322 to Glassboro, NJ, then over New Jersey Highway 47 to Westville, NJ, then over New Jersey Highway 45 to Camden, NJ, and then across the Delaware River to Philadelphia, and return over the same route; (2) between Hammonton, NJ, and Bridgeton, NJ: from Hammonton over unnumbered highways via Vineland, NJ, to junction New Jersey Highway 47, then over New Jersey Highway 47 to Millville, NJ, and then over New Jersey Highway 49 to Bridgeton; and from Bridgeton over unnumbered highways via Vineland, East Vineland, and Buena, NJ, to Hammonton; (3) between Hammonton, NJ, and Atlantic City, NJ: from Hammonton over unnumbered highway to junction U.S. Highway 30, and then over U.S. Highway 30 to Atlantic City, and from Atlantic City over U.S. Highway 40 to junction unnumbered highway near Mays Landing, NJ, and then over unnumbered highways via Milliville and Buena, NJ, to Hammonton. Serving all intermediate points on the above-specified routes; and off-route points within ten miles of the above-specified routes; (4) between Hammonton, NJ, and New York, NY, serving no intermediate points: From Hammonton over unnumbered highway to Junction U.S. Highway 206, then over U.S. Highway 206 to junction U.S. Highway 130, thence over U.S. Highway 130 to junction U.S. Highway 1, then over U.S. Highway 1 to Jersey City, NJ, and then across the Hudson River via ferry or Holland Vehicular Tunnel to New York, and return over the same route; (5) between Cape May, NJ, and Philadelphia, PA, serving all intermediate points between Cape May and Landisville, NJ, including Landisville, and serving the off-route points of Avalon, Stone Harbor, Sea Isle City, Woodbine, Wildwood, and Ocean View, NJ: From Cape May over U.S. Highway 9 to Seaville, NJ, then over New Jersey Highway 50 to junction Secondary State Highway 557 one mile north of Buck Hill, NJ, then over Secondary State Highway 557 to Buena, NJ, then over U.S. Highway 40 via Landisville, NJ, to Malaga, NJ, then over New Jersey Highway 47 to junction unnumbered highway, then over unnumbered highway to Woodbury, NJ, then over New Jersey Highway 45 to Camden, NJ, and then across the Delaware River to Philadelphia, and return over the same route; (6) between Cape May, NJ, and Philadelphia, PA, serving all intermediate points between Cape May and Port Elizabeth, NJ, including Port Elizabeth, and serving the off-route points of Avalon, Stone Harbor, Sea Isle City, Woodbine, Wildwood, and Ocean View, NJ; From Cape May over unnumbered highway (Bay Shore Road) to Green Creek, NJ, then over New Jersey Highway 47 via Millville, NJ, to Glassboro, NJ, then over New Jersey Highway 41 to Haddonfield, NJ, then over unnumbered highway via Collingswood, NJ, to Camden, NJ, and then across the Delaware River to Philadelphia, and return over the same route. (b) As a common carrier over irregular routes: *Malt beverages*, from Philadelphia, PA, to New York, NY, Wilmington, DE, Baltimore and Frederick, MD, Atlantic City, Hammonton, Gloucester, and Trenton, NJ, and Washington, D.C.; and *Empty malt-beverage containers*, from the above specified destination points to Philadelphia, PA; and *Wine and bitter*,

from Egg Harbor, NJ, to Greenwich, New Haven, and Stamford, CT, Providence, RI, Boston, Norwood, Roxbury, Salem, and Worcester, MA, New York and Tarrytown, NY, Harrisburg, Philadelphia, Pittsburgh, and Scranton, PA, Wilmington, DE, Baltimore, MD, and Washington, D.C., and *Alcoholic beverages,* from Hammomton, NJ, to points in Cape May and Salem Counties, NJ, in connection with carrier's authorized operations in the transportation of the specified commodities between Hammonton and interstate points; and *Rejected shipments* of the commodities specified immediately above the *empty beverage containers,* from points in Cape May and Salem Counties, NJ, to Hammonton, NJ. D'Agata is authorized to operate as a motor common carrier in ME, NY, VA, NJ, PA, OH, DE, MI, WI, CT, KY, MA, RI, NC, SC, IN, VT, ME, NH, and WV, pursuant to certificates issued in MC 128746 and sub-numbers thereunder. (Hearing site: Philadelphia, PA.)

Note.—Application for temporary authority has been filed.

MC F–14346F, filed March 17, 1980. LAWRENCE HANCOCK, JR., AND ROSE MARIE HANCOCK (Individuals) (2115 N. Chelton Road, Colorado Springs, CO 80909)—CONTROL—CARGO VAN LINES, INC. (Cargo) (6020 Galley Road, Colorado Springs, CO 80915). Representative: John H. Lewis, The 1650 Grant St. Bldg., Denver, CO 80203. Lawrence Hancock, Jr. and Rose Marie Hancock, individuals, seek authority to acquire control, by purchase of all the outstanding stock, of Cargo Van Lines, a non-carrier and sole stockholder of Elbert Transfer, 6020 Galley Road, Colorado Springs, CO 80915. Lawrence Hancock, Jr. and Rose Marie Hancock own all of the outstanding stock of Hancock Moving & Storage, Inc., owner of common carrier authority in MC 140017 authorizing the transportation, over irregular routes, of *used household goods,* between points in Douglas, Elbert, El Paso, Fremont, Pueblo and Teller Counties, CO, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization of such traffic. Elbert Transfer holds common carrier authority pursuant to certificate MC 136345 which authorizes the transportation, over irregular routes, of *used household goods,* between points in Douglas, Elbert, Fremont, El Paso, Pueblo and Teller Counties, CO, restricted (1) to transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and (2) to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization of such traffic. Impediment: Duplicating operating rights will exist under common control. (Hearing site: Denver, CO.)

MC F–14342F, filed March 18, 1980. REFRIGERATED TRANSPORT CO., INC. (Refrigerated) P.O. Box 308 Forest Park, GA)—CONTROL—WALTER GRIFFIN, INC., AND WALTER J. GRIFFIN, JR. (519 Morgan Mill Road, Monroe, NC 28110). Representative: Alan E. Serby, 3390 Peachtree Road, NE, 5th Floor, Lenox Towers South, Atlanta, GA 30326. Refrigerated seeks authority to acquire control of Walter Griffin, Inc., through the purchase of all its issued and outstanding capital stock. Walter Griffin, Inc., is controlled by Walter J. Griffin, Jr., who will simultaneously transfer his interstate operating rights to Walter Griffin, Inc. Richard A. Beauchamp and Lamar Beauchamp, the majority stockholders of Refrigerated, seek authority to acquire control of Walter Griffin, Inc., and Walter J. Griffin, Jr., through the transaction. The interstate operating rights to be controlled are contained in Permit No. MC–140130 (Sub-Nos. 1 and 3), which authorize the transportation of (1) *office and business machine stands and office and business machine stand parts,* from Monroe, NC, to Plymouth, MI, under continuing contract(s) with Oro Manufacturing Co., Inc., of Monroe, NC, and (2)(a) *textiles, textile products and household accessories,* and (b) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (a) above, (except commodities in bulk and those which because of size or weight require the use of special equipment), (i) between Los Angeles, CA, and Monroe, NC, on the one hand, and, on the other, points in AL, GA, IL, KS, MD, MA, MI, MN, NJ, NY, PA, SC, TN, TX, VA, and DC, and (ii) between Los Angeles, CA, and points in NC, under continuing contract(s) with Barth and Dreyfuss of California, of Los Angeles, CA. Refrigerated is authorized to operate as a motor common carrier pursuant to certificates issued in MC–107515 and sub-numbers thereunder. Coastal Transport and Trading Co., a subsidiary of Refrigerated, is authorized to operate as a motor common carrier pursuant to certificates issued in MC–121654 and sub-numbers thereunder. (Hearing site: Washington, DC.)

Note.—(1) Application for temporary authority has been filed. (2) Dual operations may be involved.

MC F–14301F, filed January 21, 1980. MICHAUD BUS LINES, INC. (Michaud) (63 Jefferson Avenue, Salem, MA 01970)—PURCHASE (PORTION)—TRAILWAYS OF NEW ENGLAND, INC., d.b.a. TRAILWAYS (Trailways) (230 West 41st Street, New York, NY 10036). Representatives: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181 and George W. Hanthorn, 1500 Jackson Street, Dallas, TX 75201. Michaud seeks authority to purchase a portion of the interstate operating rights of Trailways. J. Alex Michaud II, sole stockholder of voting stock, seeks authority to acquire control of said rights through the transaction. Michaud is purchasing those portions of the interstate operating rights contained in Trailways certificate issued in MC–1940 (Sub-No. 37), which authorizes the transportation, as a motor common carrier, as follows: (A) *passengers and their baggage, and express, mail and newspapers, in the same vehicle with passengers,* (1) between Boston, MA, and Wolfeboro, NH, serving all intermediate points; from Boston over U.S. Hwy 1 (portion formerly MA Hwy 17) to Newburyport, MA, then over unnumbered hwy to Amesbery, MA, then over MA Hwy 150 to the MA–NH state line, then over NH Hwy 150 to junction NH Hwy 108, then over NH Hwy 108 to Dover, NH, then over NH Hwy 16 to junction NH Hwy 16A, then over NH Hwy 16A to Somersworth, NH, then across the Salmon Falls River to Berwick, ME, then across the Salmon Falls River to Somersworth, NH, then over NH Hwy 16A to junction NH Hwy 16, then over NH Hwy 16 to Rochester, NH (also from Dover, NH, over NH Hwy 16 to Rochester) then over NH Hwy 11 to Alton Bay, NH, then over NH Hwy 28A to junction NH Hwy 28, and then over NH Hwy 28 to Wolfeboro, and return over the same route. (2) Between Rochester, NH, and Wolfeboro, NH, serving the intermediate points of Wolfeboro Falls, Wolfeboro Center, Brookfield, Sanbornville, Union, Milton, Milton Mills, and North Rochester, NH; from Rochester over NH Hwy 16 to junction unnumbered hwy, then over unnumbered hwy to Milton Mills, NH, then return over unnumbered hwy to junction NH Hwy 16, then over NH Hwy 16 to junction NH Hwy 109, then over NH Hwy 109 to junction NH Hwy 28, and then over NH Hwy 28 to Wolfeboro, and return over the same route. (B)

Passengers and their baggage, and express and newspapers in the same vehicle with passengers, (1) between Salisbury, MA, and Portland, ME, serving all intermediate points; from Salisbury over U.S. Hwy 1 via Kittery and York Corner, ME, to Cape Neddick, ME (also from York Corner over Alternate U.S. Hwy 1 to Cape Neddick), and then over U.S. Hwy 1 to Portland, and return over the same routes. (2) Between Smithtown, NH, and Portland, ME, serving all intermediate points; also over U.S. Hwy 1 via Saco, ME, to West Scarboro, ME (also from Saco over ME Hwy 9 via Old Orchard Beach, ME, to junction U.S. Hwy 1 at West Scarboro, ME) then over U.S. Hwy 1 to junction unnumbered hwy at or near Oak Hill, ME, then over unnumbered hwy to Scarboro, ME, then return over said unnumbered hwy to junction U.S. Hwy 1, then over U.S. Hwy 1 to Portland, and return over the same route. (3) Between Portland, ME, and Biddeford, ME, serving all intermediate points; from Portland over U.S. Hwy 1 to junction ME Hwy 9, then over ME Hwy 9 to Old Orchard, ME, (also from Portland over U.S. Hwy 1 to junction Cascade Road, then over Cascade Road to Old Orchard), then over ME Hwy 5 to Saco, ME, and then over U.S. Hwy 1 to Biddeford, and return over the same routes. (4) Between Kittery, ME, and Kittery Navy Yard, ME, serving all intermediate points; from Kittery over Government Street to Kittery Navy Yard, and return over the same route. (5) between Dover, NH, and the Portsmouth Navy Yard, Kittery, ME, serving all intermediate points; (a) from Dover over NH Hwy 16 to junction U.S. Hwy 4, then over U.S. Hwy 4 to junction Bypass U.S. Hwy 1, then over Bypass U.S. Hwy 1 and the interstate Bridge, to Kittery, ME, and then over Government Street to the Portsmouth Navy Yard, Kittery, and return over the same route. (b) from Dover over NH Hwy 16 to junction U.S. Hwy 1, then over U.S. Hwy 1 to junction Government Street in Kittery, ME, then over Government Street to the Portsmouth Navy Yard, Kittery, and return over the same route. (6) between Portsmouth, NH, and Rye, NH, serving all intermediate points; from Portsmouth over NH Hwy 1A to Rye North Beach, and then over unnumbered hwy to Rye, and return over the same route. (7) between Hampton, NH, and Hampton Beach, NH, serving all intermediate points; from Hampton over NH Hwy 101E to Hampton Beach, and return over the same route. (C) *Passengers and their baggage, and express, mail and newspapers in the same vehicle with passengers, during the season extending from the 15th day of May to the 30th day of October, inclusive.* (1) between Rye, NH, and Hampton Beach, NH, serving all intermediate points; from Rye over unnumbered hwy to Rye North Beach, NH, and then over NH Hwy 1A to Hampton Beach, and return over the same route. (2) *Passengers and their baggage, and express, mail and newspapers* in the same vehicle with passengers, as alternate routes for operating convenience only; between Kittery, ME, and Portland, ME, serving no intermediate points; from Kittery over city streets to junction U.S. Hwy 1 and Maine Turnpike, then over ME Turnpike to Portland, and return over the same route. (3) between junction U.S. Hwy 1 and cut-off south of Portsmouth, NH, and junction ME Turnpike and U.S. Hwy 1 at South Portland, ME, serving no intermediate points; from junction U.S. Hwy 1 and cut-off south of Portsmouth over the cut-off and ME Turnpike to U.S. Hwy 1 at South Portland, and return over the same route. (4) between Salisbury, MA, and junction NH Turnpike and ME Turnpike at the ME–NH state line, serving non intermediate points, but serving the northern termini for joinder only; from Salisbury over unnumbered hwy to junction NH Turnpike, then over NH Turnpike to junction ME Turnpike, and return over the same route. (D) *passengers and their baggage, and newspapers in the same vehicle with passengers,* (1) between South Berwick, ME, and Dover, NH, serving all intermediate points; from South Berwick over ME Hwy 4 to the ME–NH state line, and then over NH Hwy 4 to Dover, and return over the same route. (2) between South Berwick, ME, and Dover, NH, serving the intermediate points of Salmon Falls and Rollinsford, NH; from South Berwick over unnumbered hwy to ME—NH state line, near Salmon Falls, NH, then over unnumbered hwy via Salmon Falls and Rollinsford, NH, to Dover, and return over the same route. (E) *passengers and their baggage,* (1) between Dover, NH, and Kittery, ME, serving the intermediate points of Jewett, Gould Corner, and Eliot, ME; from Dover over NH Hwy 4 to the NH–ME state line, then over ME Hwy 4 to South Berwick, ME, then over ME Hwy 103 to Kennard Corner, in the Town of Eliot, ME, and then over unnumbered hwy to Kittery, and return over the same route. RESTRICTION: No passengers shall be accepted for transportation in either direction between Dover, NH, on the one hand, and, on the other, points between Kennard Corner and Kittery, ME. (F) *passengers and their baggage, and express, newspapers and mail, in the same vehicle with passengers, during the period from April 1, to November 30, inclusive of each year,* (1) between Rochester, NH, and the Lincoln Downs Race Track, Lincoln, RI, serving the intermediate points of Somersworth, Dover, Durham, Newmarket and Exeter, NH, and Amesbury, MA; from Rochester over NH Hwy 16 to junction NH Hwy 16A, then over NH Hwy 16A via Somersworth, NH, to junction NH Hwy 16, then over NH Hwy 16 to Dover, NH, then over NH Hwy 108 via Exeter, NH, to junction NH Hwy 150, then over NH Hwy 150 to the NH–MA state line, then over MA Hwy 150 to Amesbury, MA, then over unnumbered hwy to Newburyport, MA, then over U.S. Hwy 1 to junction MA Hwy 128, then over MA Hwy 128 to junction MA Hwy 1A, then over MA Hwy 1A to junction MA Hwy 121, then over MA Hwy 121 to the MA–RI state line, then over RI Hwy 121 to junction Rhode Island Hwy 114, then over RI Hwy 114 to junction RI Hwy 116, then over RI Hwy 116 to junction RI Hwy 146, then over RI Hwy 146 to Lincoln-Downs Race Track, Lincoln, RI, and return over the same route. (2) between Rochester, NH, and the Narragansett Race Track, Pawtucket, RI, serving the intermediate points of Somersworth, Dover, Durham, Newmarket, and Exeter, NH, and Amesbury, MA; from Rochester as specified in the immediately above described route to junction MA Hwy 128 and 1A, then over MA Hwy 128 to junction U.S. Hwy 1, then over U.S. Hwy 1 to junction MA Hwy 1A at or near South Attleboro, MA, then over MA Hwy 1A to the MA–RI state line, then over RI Hwy 1A to the Narragansett Race Track, Pawtucket, RI, and return over the same route. (3) between Rochester, NH, and the Suffolk Downs Race Track, East Boston, MA, serving the intermediate points of Somersworth, Dover, Durham, Newmarket and Exeter, NH, and Amesburg, MA; from Rochester as specified in the two paragraphs described next above to junction U.S. Hwy 1 and MA Hwy 128 at or near Lynnfield, MA, then over U.S., Hwy 1 to junction MA Hwy C1, then over MA Hwy C1 to the Suffolk Downs Race Track, East Boston, MA, and return over the same route. (4) between Rochester, NH, and Scarboro Downs Race Track, at or near Scarboro, ME, serving the intermediate points of Dover and Somersworth, NH; from Rochester over NH Hwy 16 to Dover, NH, then over NH Hwy 16 to junction NH Hwy 16A, then over NH Hwy 16A to Somersworth, NH, then over NH Hwy 9 to the NH–ME State line, then over ME Hwy 9 to

junction ME Turnpike, then over ME Turnpike to Scarboro Downs Race Track at or near Scarboro, ME, and return over the same route.

MC 1940 (Deviation No. 14), published May 27, 1964 in the **Federal Register**, to operate as a common carrier, by motor vehicle, of *passengers and their baggage*, over a deviation route between Danvers, MA, and Portsmouth, NH, over Interstate Hwy 95, and No. MC–1940 (Deviation No. 13), published May 20, 1964 in the **Federal Register**, to operate as a common carrier, by motor vehicle, of *passengers and their baggage*, over a deviation route from Alton, NH, over NH Hwy 28 to junction MH Hwy 28A, and return over the same route. Michaud operates over irregular and regular routes, as a common carrier under Certificate No. MC–94742 and sub-numbers thereunder. (Hearing site: Boston, MA, or Washington, D.C.)

Note.—An application for temporary authority has been filed.

MC–F–14244F, filed November 27, 1979. HILL & HILL TRUCK LINE, INC. (Hill) (14942 Talcott, P.O. Box 9698, Houston, TX 77105)—PURCHASE—SIGNAL TRUCKING SERVICE, LTD., CURTIS B. DANNING, TRUSTEE IN BANKRUPTCY, (Signal) (15233 Ventura Blvd, Suite 300, Sherman, Oaks, CA 91403). Representatives: Martin J. Rosen, 256 Montgomery Street, 5th Floor, San Francisco, CA 94104 and Warren N. Grossman, 1800 United California Bank Building, 707 Wilshire Blvd, Los Angeles, CA 90017. Hill seeks authority to purchase the interstate operating rights of Signal. J. W. Hershey, Olive D. Hershey, H. F. Ormston, and G. Cameron Duncan who together control Hill, through stock ownership, also seek authority to acquire control of said rights through the transaction. Hill is purchasing the interstate operating rights contained in Signal's Certificate in MC-886 and sub-numbers thereunder, which authorize operations, in interstate or foreign commerce, as a motor common carrier, as follows: (1) *general commodities*, usual exceptions, (a) between Los Angeles Harbor, CA, on the one hand, and, on the other, Los Angeles and Vernon, CA, (b) from Los Angeles Harbor, CA, to Walnut Park and Huntington Park, CA, and points within five miles of the intersection of 9th and Indiana Streets, Los Angeles, CA, (c) From Huntington Park and South Gate, CA, and points south of Whittier Boulevard and east of Alameda Street within five miles of the east Los Angeles City limits, to Los Angeles Harbor, CA; (d) From Los Angeles Harbor, CA; to South Gate, CA, and points south of Whittier Boulevard and east of Alameda Street within five miles of the east Los Angeles City limits, except those points within five miles of the intersection of Ninth and Indiana Streets, Los Angeles, CA; (e) Between Long Beach, CA, on the one hand, and, on the other, Vernon, Huntington Park, and South Gate, CA, and points south of Whittier Boulevard and east of Alameda Street within five miles of east Los Angeles City limits, CA; (f) Between Los Angeles, Wilmington, and Moneta, CA, on the one hand, and, on the other, points in CA within 80 miles of Los Angeles, not including points in San Diego County, CA; (g) Between the terminal of said carrier situated in Los Angeles County, CA, within one mile of Los Angeles, CA, and near the intersection of East 26th Street and Indiana Street, on the one hand, and, on the other, points in CA within 80 miles of Los Angeles, not including points in San Diego County, CA; (h) From Long Beach and Los Angeles Harbor, CA, to San Diego, CA; (2) *General commodities*, except commodities requiring special equipment, in pickup and delivery service, between points in the Los Angeles, CA, Commercial Zone, as defined by the Commission in 3 M.C.C. 248. The authority herein granted shall be subject to the following restrictions: Except for deliveries to and from job sites such as construction projects, oil, gas, or water wells, or mines, oil fields, warehouses or field storage yards, no freight shall be transported in excess of ten miles on either side of the highway designated in paragraphs above. Applicant shall not transport, as a common carrier, any shipments of iron and steel, and iron or steel articles, including tinplate, and clay and clay products, when such commodities originate at, or are destined to Kaiser, California. (3) (1) *Iron and steel articles*, (2) *non-ferrous metals*, and *non-ferrous metal products* (except household appliances and housewares), (3) *clay and clay products*, (4) *heavy machinery and heavy machinery parts*, (5) (a) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas, petroleum, their products and by-products, water, and sewage, and (b) *machinery, materials, equipment, and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines used in the transmission of natural gas, petroleum, their products and by-products, water, and sewage, (6) *contractors, mining, and military equipment, materials and supplies*, (7) *power or communications distribution and metal processing equipment, materials and supplies*, (8) *commodities* the transportation of which requires by reason of their size or weight the use of special equipment, (9) *electrical cables*, (10) *scrap metals*, and (11) *firefighting equipment, materials and supplies*, Between points in CA. (4) *General commodities* (except household goods as defined by the Commission, commodities in bulk, classes A and B explosives, commodities requiring special equipment, and commodities of unusual value, and except motor vehicles and commodities in vehicles equipped with mechanical refrigeration), (a) Between points in San Francisco, Alameda, San Mateo, and Contra Costa Counties, CA, (b) Between points in Santa Clara County, CA, San Mateo, CA, points in that part of San Mateo County located south of San Mateo on U.S. Highways 101 and 101 By-pass, Hayward, CA, and points in that part of Alameda County, CA, located south of Hayward on CA Highways 9 and 17. Hill operates as a motor common carrier, in interstate or foreign commerce pursuant to its certificates in MC-107678 and sub-numbers. Hill controls Hill & Hill Transport of Canada, Ltd. Hill & Hill Transport of Canada, Ltd., operates pursuant to certificate in MC-118453 (Sub-No. 3). Common control was approved by Review Board Number 5 by a decision served December 31, 1974. (Hearing site: Los Angeles, CA.)

[FR Doc. 80–15876 Filed 5–22–80; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 29242]

Hillsdale County Railway Co., Inc.—Common Control of Designated Operators and Motor Common Carrier Operating Rights, Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343–11347

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Hillsdale County Railway Company, Inc. (Hillsdale) and its controlling officers filed an application on March 30, 1978, supplemented February 20, 1980, seeking motor common carrier operating rights ancilliary to its presently held rail designated operator authority. Hillsdale's four principal operating officers hold positions of control in other designated operators. The common control of designated operators is exempt from the requirement of prior approval for the common control of

carriers. [*See* Ex Parte No. 361, *Exemption of Certain Designated Operators from Section 11343*, 361 I.C.C. 379 (1979). This exemption applies only to railroads exclusively operating as designated operators.]

After issuance of a certificate of public convenience and necessity for motor carrier operating rights, Hillsdale et al. will no longer operate exclusively as designated operator. Therefore, the designated operator exemption will be inapplicable. The motor carrier authority sought by Hillsdale was found warranted by the public convenience and necessity, but its issuance was conditioned upon Hillsdale et al. filing an application for approval of the common control relationship under 49 U.S.C. 11343.

Upon our own motion we will hold a proceeding for exemption of this matter under 49 U.S.C. 10505. The exemption proposed here, if granted, would be in lieu of that statutory approval found necessary.

DATES: Comments must be received on or before June 23, 1980.

ADDRESS: Send comments to: Interstate Commerce Commission 12th & Constitution Ave. N.W., Washington, DC 20423. All written submissions will be available for public inspection during regular business at the same address. Written submissions should refer to Finance Docket No. 29242.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202–275–7245.

SUPPLEMENTARY INFORMATION: The principal operating officers of Hillsdale contend that both they and Hillsdale should be exempt from formal approval by the Commission of their affiliation with commonly controlled carriers. John H. Marino is president of both Hillsdale and Lenawee County Railroad Co. Inc. (LCRC). Franklin S. Macomber is vice president of both Hillsdale and LCRC. Eric D. Gerst is secretary and general counsel for Hillsdale, LCRC and Tuscola and Saginaw Bay Railroad Company, Inc. (TSBY). Charles J. Lapp is assistant vice president of Hillsdale and president of TSBY.

We will begin a proceeding to exempt this common control from the requirements of obtaining prior Commission approval under 49 U.S.C. 11343–11347. This authority is specifically permitted by 49 U.S.C. 10505.

The principal operating officers of Hillsdale point out that common control of designated operators is exempt from the normal common control requirements by the decision in Ex Parte No. 361, *Exemption of Certain Designated Operators from 49 U.S.C. 11343, supra.* It is argued that the motor common carrier rights to be acquired are of such small scope and are so tied to the operations of the designated operator, that the transaction should be exempted from Commission jurisdiction. Otherwise, it is argued, the intent of Ex Parte No. 361 will be frustrated.

The Transaction

Hillsdale presently operates over certain branch lines that were not transferred to Conrail as part of the Final System Plan on April 1, 1976. These lines total approximately 60 miles in Hillsdale and Branch Counties, MI and Steuben County, IN. Hillsdale has a single connection with Conrail at Quincy, MI, but it has no direct rail connection to the east. Although Hillsdale has maintained rail service to the 10 communities previously served by the Penn Central Transportation Company, the substitute trucking authority held by its predecessor was not conveyed to Hillsdale. Therefore, it is forced to operate in a circuitous manner on east bound traffic.

Hillsdale sought to acquire the subject motor carrier operating rights in order to fill a void in its service requirements. By a series of decisions of Review Board No. 2, the most recent of which was served November 29, 1979, this authority was granted in No. MC—144576. However, the Board conditioned the grant requiring those persons in common control or management of the designated operator rights of Hillsdale and the motor common carrier rights of Hillsdale, to be acquired, to file an application for approval of the common control or relationship under 49 U.S.C. 11343, or an affidavit indicating why such approval is unnecessary.

The authority conditionally granted would allow Hillsdale to operate as a motor common carrier transporting general commodities, when moving in trailer-on-flat car service, between points in Indiana and Michigan on the one hand, and, on the other, Toledo, OH, and Detroit, MI. The authority is restricted to service which is auxiliary to, or supplemental of, rail service of Hillsdale. Hillsdale argues that this motor common carrier authority would eliminate its present circuity of operations. It maintains that presently a carload of freight destined for eastern points which originates in Angola, IN must first be backhauled to Elkhart, IN, before it can move east. This is an unnecessary movement of 164 miles. Hillsdale claims that this circuity causes delay of up to three days in shipments resulting in customers switching to other modes of transportation.

Hillsdale argues that if the subject motor common carrier authority is granted it will be able to provide a single carrier movement from its service area to eastern points. It will also be able to participate in piggyback service via the major eastern intermodal carriers such as Conrail and Chessie. Hillsdale contends that this is the only way for it to recapture a portion of the freight traffic previously moved over Penn Central.

Hillsdale contends that this plan is environmentally beneficial because present truck movements to eastern cities of 600 miles will be replaced by truck movements of 100 miles and rail movements of 500 miles. This will reduce air and noise pollution and congestion on the highways.

The fact that the principal operating officers of Hillsdale will also control motor common carrier rights normally requires the filing or application with the Commission for authority and approval of the transaction. The motor common carrier rights sought are restricted to traffic moving in trailer-on-flatcar service between points in Indiana and Michigan on the one hand, and, on the other, Toledo, OH and Detroit, MI. It is further restricted to service which is auxiliary to or supplemental of Hillsdale's rail service. As such, the authority sought is very closely related with the rail operations of the designated operator Hillsdale, and not actually an independent operation.

It is argued that the transaction will not adversely affect other carriers, shippers, the public, or the present operations of Hillsdale. It is also maintained that the transaction will have a positive effect on energy consumption and the environment.

It is argued that the usual regulatory requirements contained in 49 U.S.C. 11343–11347 would be an undue burden on Hillsdale and its principal operating officers and would serve little or no useful purpose.

The Statute

Acquisition of control of a carrier by: (1) A person that is not a carrier but controls any number of carriers; (2) A carrier that has the effect of putting that carrier and persons affiliated with it, taken together, in control of another carrier; (3) A person affiliated with a carrier that has the effect of putting that carrier and persons affiliated with it, taken together, in control of another carrier; and (4) At least two persons acting together (one of which is a carrier or affiliated with a carrier) which has the affect of putting those persons, and carriers and persons affiliated with any

of them, or with any of those affiliated carriers, taken together, in control of another carrier, are transactions that require the approval and authority of the Commission under 49 U.S.C. 11343–11347. To seek Commission approval, an application must be filed in compliance with the ICC *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 CFR Part 1111 (1978) (Consolidation Procedures). By this proceeding Hillsdale and its principal operating officers seek to be exempted from 49 U.S.C. 11343–11347 so that they will not have to file an application under the Consolidation Procedures.

We can exempt a matter *related* to a rail carrier under 49 U.S.C. 10505 if it is (1) of limited scope; (2) is not necessary to carry out the transportation policy of 49 U.S.C. 10101; (3) would be an unreasonable burden; and (4) would serve little or no useful purpose.

This is the type of transaction which Congress intended the Commission to consider exempting when it adopted 49 U.S.C. 10505. Before granting an exemption, we are required to provide the opportunity for a proceeding. This request for comments on the proposed exemption of the transaction is that opportunity. All comments filed in response to this notice, along with information filed by Hillsdale, will be used to determine whether or not the exemption under 49 U.S.C. 10505 should be granted.

This proceeding is instituted under the authority of 49 U.S.C. 10505 and pursuant to 5 U.S.C. 553, 559.

This is not a major action significantly affecting either energy consumption or the quality of the human environment.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam.

Dated: May 16, 1980.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–15877 Filed 5–22–80; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 375 (Sub-1)]

Increased Freight Rates and Charges—1980—Nationwide—Phase II; Authority To File Master Tariff

Decided: May 19, 1980.

By petition and verified statements filed May 12, 1980, United States railroads seek authority to increase, selectively, freight rates and charges at levels from 1.0 to 20.9 percent. The railroads seek to recover operating costs of $1.57 billion experienced since the last general increase in Ex Parte No. 375. The bulk of these costs are labor expenses and materials, but excluding fuel. Petitioners estimate that if the selective increases are granted in their entirety, and applied fully on all traffic, including intrastate traffic, without exceptions, flagouts, or holddowns, they will realize revenues of $1.68 billion. However, based on historic recoveries, when flagouts and holddowns are taken into effect, the carriers expect to realize $1.50 billion. On average, the increases that would apply are 7.6 percent in and between the Eastern and Western Territories, and 3.8 percent in, from, and to the Southern Territory.

The rate increases sought vary from commmodity to commodity as well as by region and is the second phase of the railroads' 1980 revenue need program. A copy of the petition and verified statements may be obtained from the Committee of Counsel for Eastern, Western, and Southern Railroads, Room 527, American Railroads Building, 1920 L Street, N.W., Washington, D.C. 20036.

The railroads seek permission to make the proposed increases effective, upon not less than 10 days' notice, on July 1, 1980 in and between the West and South and on September 1, 1980 in the East and between the East and the other territories. These increases are subject to the condition that refunds shall be made in the event that, after any investigation that the Commission deems necessary, no increase or a lesser increase than that requested is authorized. Petitioners state that the increases are to be applied to the Ex Parte No. 368–A rate level and will be published in a tariff that will include the 5.1 percent increase that became effective April 1, 1980.

Petitioners also seek entry of a decision modifying all outstanding Commission decisions to the extent necessary to enable the railroads to file and make effective the proposed increased rates and charges. We are also requested to allow the entry of appropriate decisions under former sections 4 and 6 of the Interstate Commerce Act. (49 U.S.C. § 10726 and 10761–65.)

Petitioners seek authority to use the same connecting-link supplements and items issued under Ex Parte No. 375 to also connect the rate tariffs to the proposed master tariff. Petitioners also seek to amend the master tariff without specific authority.

The Petitioners have filed and served verified statements constituting their evidential case pursuant to the requirements set forth in Ex Parte No. 290, *Procedures Governing Rail Carrier General Increase Proceedings*, 49 CFR 1102, effective January 1, 1978. Petitioners have also submitted data of the type called for in Ex Parte No. 290 (Sub-No. 1), *Procedures-Rail Car. General Increase Proceedings*, 349 I.C.C. 22 (1974), namely detailed information on estimated revenues which would have been obtained had the last authorized increase been fully applied and the annual total increase in revenue realized by application of the last authorized general increase.

The petitioners have given notice of the petition and have furnished data to the public in compliance with Ex Parte No. 286, *Notice of Increases in Frt. Rates and Pass. Fares*, 349 I.C.C. 741 (1975), and with former section 5b of the Interstate Commerce Act (49 U.S.C. 10706).

The petitioners have also submitted information of the type called for in Ex Parte No. 55 (Sub-No. 4), *Revised Guidelines for the Implemetnation of the National Environmental Policy Act of 1969*, 352 I.C.C. 451 and 49 CFR 1108, namely a supplemental evaluation of environmental considerations with regard to the petitioners' increased rate proposal. The petitioners contend that the requested increases will have no signficant adverse effects upon the movement of the traffic or transportation of recyclable commodities by rail. Any person or persons believing that the requested increases, if authorized, would have a significant impact upon the quality of the human environment are invited to comment upon this matter in verified statements authorized to be filed pursuant to this decision. Environmental matters and the requirements of the National Environmental Policy Act of 1969 will be considered by this Commission in any subsequent action on the merits of the requested general increases.

It is not clear whether the proopsed increases violate President Carter's voluntary wage and price guidelines. We regard this as an important issue in this proceeding. Parties are invited to comment upon this matter in their verified statements, and we will consider it in our subsequent decision on the merits of the requested increases.

The petitioner's request to file the master tariff upon 10 days' notice is denied. It is essential that the master tariff be on file sufficiently long enough before the due date for protests in order to give interested parties an opportunity to lodge timely filed protests against the tariff. Notice of 50 days is justified. This will allow sufficient time after our decision for shippers to adjust their

pricing systems to the Commission's action, should the increase be approved.

We will not authorize use of the connecting-link supplements and items filed under Ex Parte No. 375 to connect the rate tariffs to the proposed master tariff. To do so would create confusion since the proposed tariff is not a reissue of the Ex Parte No. 375–A master tariff.

We also will not authorize the amendment of the master tariff without specific authority.

The amendments of master increase tariffs are important enough for this Commission to consider each amendment on a case-by-case basis. This will continue our present practice.

We will authorize the reissuance of the master tariff upon not less than 5 days' notice to reflect new fuel-related surcharges that are in effect when the reissue is filed. However, this reissue authority will not be granted with respect to the 1.2 percent shortfall recovery fuel surcharge, effective April 11, 1980, from, to, and within the West.

We find that the railroads have justified an authorization to file their tariff upon not less than 50 days' notice and an expedited procedural schedule for considering the proposed increase.

The petitioners have requested that certain of the evidence submitted by them be treated as confidential by the Commission and not be released to the general public. We deny this request. The railroads have filed a petition in Ex Parte No. 290 which requests similar confidential treatment of evidence. We will deal with the issue of confidentiality in our decision on that petition.

In Ex Parte No. 290, *Procedures Governing Rail Carrier General Increase Proceedings*, decision served September 28, 1977, we added recyclables to the list of commodities for which specified data must be submitted when general rate increases are requested. This monitoring is intended to prevent future general rate increases from disrupting the rate structures for recyclables.

We ask protestants to submit evidence from which we may determine whether the proposed selective increases will disturb the freight rate fabric for recyclable commodities. We will examine this situation and deal with it in our decision regarding the proposed increase.

It is Ordered: 1. All common carriers by railroad are made respondents to this proceeding.

2. Under the special permission authority granted in conjunction with this decision, the tariff schedules shall be published and filed upon not less than 50 days' notice effective no earlier than July 10, 1980, *subject to protest and possible suspension.* The tariff to be filed must incorporate the prior increases of 5.1 percent presently effective in the X–375–A master tariff. These schedules are to contain an appropriate refund provision. The master tariff may be reissued upon not less than 5 days' notice to incorporate fuel related increases that are in effect when the reissue is filed. However, this reissue authority will not apply to the 1.2 percent shortfall recovery surcharge which became effective April 11, 1980.

3. Any person opposing or wishing to comment on the proposed increase in rates and charges shall file and serve verified statements, as provided below, on or before June 13, 1980.[1]

(a) The verified statements shall contain all relevant evidence which the parties desire to have considered by the Commission as a basis for a decision on the merits. Any submissions on asserted environmental and energy impacts shall be segregated under an appropriate subheading.

(b) Verified statements may include arguments in support of an affiant's position, but arguments shall be segregated in a separate section of the document containing the verified statement or contained in a separate document simultaneously filed and served.

(c) Each verified statement shall be signed in ink by affiant and verified (notarized) in the manner provided by Rule 48 and Form No. 6 of the Commission's Rules of Practice (See 49 CFR 1100.48 and Appendix B, Form No. 6, to 49 CFR 1000). The post office address of affiant or his counsel shall be shown.

(d) Verified statements and arguments shall be filed and served as follows: The original and 24 copies of each document for the use of the Commission shall be addressed to the Secretary, and sent to the Office of Proceedings, Room 5340, Interstate Commerce Commission, Washington, D.C. 20423, except that a lesser number of copies may be filed upon a showing of good cause. All documents filed with the Commission in this matter shall contain the following notation on the envelope: Ex Parte No. 375 (Sub-1). One copy shall be served upon the Committee of Counsel for the Railroads, Room 527, American Railroads Building, 1920 L Street, NW, Washington, DC 20036, which service shall constitute service upon all respondents. However, all parties able to do so shall serve 20 copies upon the railroads' representative. In all cases, where service is made by mail, the document shall be mailed in time to be received by the respective due dates.

(e) Each verified statement shall contain a certificate of service stating that it has been timely served on opposing parties.

(f) Verified statements and arguments by persons opposed to the proposed increase in rates and charges shall include all matters which they desire the Commission to consider with respect to statutory suspension of the rates pending completion of the investigation, as well as evidence relevant to the ultimate decision.

4. On or after June 19, 1980, the respondents shall file with the Commission and serve upon opposing parties their replies to protests or other pleadings and rebuttal evidence. Rebuttal evidence shall be filed in accordance with the regulations published in 49 CFR 1102, governing opening statements, except that replies and rebuttal evidence need be served only upon the party (and his counsel if known) to whose evidence the reply or rebuttal is directed. However, replies or rebuttal statements proposing changes in the tariff shall be furnished to interested parties upon request.

5. The Commission will endeavor to issue its decision by June 30, 1980, so that the shipping public will have adequate time to adjust its pricing system to the Commission's action.

6. The request for fourth-section relief will be considered following the filing of verified statements and replies.

By Special Permission Order No. 80–2880 served in conjunction with this decision, the Commission is authorizing the filing of tariff schedules increasing rates and charges sought in the petition. These tariff schedules are to become effective upon not less than 50 days' notice to the Commission and the general public, subject to protest and possible suspension as provided by the Interstate Commerce Act. All documents filed with the Commission in this matter shall contain the following notation on the envelope: Ex Parte No. 375 (Sub-No. 1).

The petition is denied in all respects not specifically granted.

Special Permission No. 80–2880

It is ordered:

1. All Railroads of the United States, and water and motor carriers to the extent they have joint rates with the railroads, and their tariff-publishing agents are authorized to depart from the Commission's tariff publishing rules in Part 1300 ot title 49 of the Code of Federal Regulations when publishing

[1] Section 10707(c) of the Interstate Commerce Act specifically requires the filing of *verified complaints* seeking suspension of proposed rate changes.

and filing tariffs and tariff amendments to become effective no earlier than July 10, 1980, upon not less than 50 days' notice to the Commission and to the public providing for increased rates and charges as set forth in the petition.

(a) By publishing and filing a master tariff of increased rates and charges, and supplements to the master tariff, providing increases by means of conversion tables of rates and charges, which shall include, and maintain in effect, a refund provision reading as follows:

In the event any increases resulting from the application of this tariff exceed the increases subsequently approved or prescribed by the Interstate Commerce Commission, the carriers will refund the difference between the increases resulting from the application thereof and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission with percent interest.[2]

In the event any increase resulting from the application of the tariff is disapproved by the Commission and no increase is authorized, the carriers will refund the full amount of the increase colledted with percent interest.[3]

The master tariff shall be conditioned to expire with July 9, 1982, and all relief granted in this decision expires with that date, which may not be extended or cancelled except upon specific authorization of this Commission. Respondents are placed on notice that they must comply with the regulations in 49 CFR 1300.32 governing the transfer of railroad general increases from master tariffs. The master tariff must initially contain all provisions necessary to permit application of every aspect of this proposal. Subsequently, provisions other than those of a general character may be cancelled and transferred to the particular tariff affected upon a common effective date with appropriate notation to that effect in the master tariff.

(b) By publication and filing of a connecting link supplement to each tariff to be made subject to the master tariff, connecting such tariffs with the master. Such supplements may be blanket supplements (a common supplement issued to two or more tariffs). The connecting link supplements issued under Ex Parte No. 375 may not be used to connect tariffs to the proposed master tariff.

(c) The master tariff and connecting link supplements issued and filed under this decision shall not provide for non-application on interstate traffic comptetitive with intrastate traffic between the same points unless the interstate rates and routes are specifically identified in the connecting link supplements or other amendments to the tariffs.

(d) By publication and filing of tariffs or amendments to tariffs effective concurrently with the master tariff and upon the same notice which provide specifically increased rates and charges but which do not result in an increase in charges for transportation and other services greater than those specified in the petition, provided all such publication is identified in the tariffs and made subject to a refund clause worded substantially as in paragraph 1(a) above.

2. The master tariff may be reissued upon not less than 5 days' notice to incorporate fuel related increases that are in effect when the reissue is filed. No other changes may be made in the reissue. This reissue authority does not apply to the 1.2-percent shortfall recovery surcharge which became effective April 11, 1980.

3. (a) The master tariff, as amended, and all other tariffs and amendments to tariffs, that employ the shortform methods authorized here shall bear the notation:

Form of publication authorized, I.C.C. permission No. 80–2880.

(b) Tariffs or amendments to tariffs publishing specifically increased rates or charges shall provide a notation reading:

Publication made in accordance with I.C.C. permission No. 80–2880.

4. Connecting-link supplements authorized here shall be exempted from the Commission's tariff-publishing rules governing the number of supplements and the volume of supplemental matter permissible.

5. The master tariff filed under this decision shall not be amended, except to correct errors and to comply with findings and orders of the Commission, without specific authorization. The terms of 40 CFR 1300.9(e) are not waived as to supplements to the master tariff.

6. Tariff publishing agents must furnish a copy of the master tariff to subscribers of all tariffs which are governed by the master tariff. This must be done not later than the date that copies are sent to the Commission. When there is more than one tariff of a subscriber governed by the master tariff, only one copy of the master tariff need be furnished to the subscriber unless additional copies are requested.

7. Outstanding decisions of the Commission are modified only to the extent necessary to permit the filing of tariff publications containing the proposed increase, and all tariff publications filed shall be subject to protest and possible suspension and rejection. In that regard, we direct petitioners' attention to our admonitions in prior general increase proceedings concerning maintenance and preservation of existing port relationships. See, for example, *Increased Freight Rates and Charges, 1972*, 341 I.C.C. 288, 336, and *Increased Freight Rates, 1970 and 1971*, 339 I.C.C. 125, 188.

Notice of the filing of a railroad general increase petition will be given by sending a copy of this decision to each party to the Ex Parte No. 368 proceeding, to the Governor and public utility regulatory body of each State, the Environmental Protection Agency, the Special Assistant to the President for Consumer Affairs, and by depositing a copy in the Office of the Secretary of the Commission at Washington, DC, and by filing a copy with the Director, Office of the Federal Register for publication in the **Federal Register**.

8. This Special Permission will expire on July 9, 1982.

9. Volume coal rates which already include a factor for future labor wage increases shall not be subject to this increase. The proposed tariff will be amended to exempt all such tariffs if they have not already been excluded from this increase.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam. Commissioner Clapp absent and not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–15875 Filed 5–22–80; 8:45 am]

BILLING CODE 7035–01–M

[2] The interest rate to be inserted in the refund provision shall be equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. See Section 10707(d) of the Interstate Commerce Act.

[3] See footnote 2.

Transportation of Government Traffic; Special Certificate Letter Notices

The following letter notices request participation in a Special Certificate of Public Convenience and Necessity for the transportation of general commodities, (except classes A and B explosives, radioactive materials, etiologic agents, shipments of secret materials, and weapons and ammunition which are designated sensitive by the United States Government), between points in the United States (including Alaska and Hawaii), restricted to the transportation of traffic handled for the United States Government or on behalf of the United States Government where the government contractor (consignee or consignor), is directly reimbursed by the government for the transportation costs, under the Commission's regulations (49 CFR 1062.4), pursuant to a general finding made in Ex Parte No. MC–107,

Government Traffic, 131 M.C.C. 845 (1979).

An original and one copy of verified statement in opposition (limited to argument and evidence concerning applicant's fitness) may be filed with the Interstate Commerce Commission on or before June 12, 1980. A copy must also be served upon applicant or its representative.

If applicant is not otherwise informed by the Commission, operations may commence on or before June 23, 1980, subject to its tariff publication's effective date, or the filing of an effective tender pursuant to 49 U.S.C. 10721.

GT–312–80 (Special Certificate—Goverment Traffic), filed April 21, 1980. Republished this issue to reflect Government to be served. Applicant: FORBES TRANSFER COMPANY, INC., 1819 S. Goldsboro Street, Wilson, NC 27893. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Government Agency involved: Agencies listed in the U.S. Government Manual (1979–80 edition).

GT–333–80 (Special Certificate—Government Traffic), filed April 21, 1980. Applicant: CONTRACT FREIGHTERS, INC., 2900 Davis Blvd., P.O. Box 1375, Joplin, MO 64801. Representative: Don D. Lacy (Address same as applicant). Government Agency involved: General Services Administration, U.S. Postal Service, U.S. Government Printing Office, National Aeronautics and Space Administration, Departments of Defense, Transportation, Energy, Agriculture, Interior and Health, Education and Welfare, Tennessee Valley Authority and Federal Prison Facilities.

GT–334–80 (Special Certificate—Goverment Traffic), filed April 28, 1980. Applicant: J & L REFRIGERATED TRUCKING CO., INC., 905 East Langsford Road, Lee's Summit, MO 64063. Representative: Jim R. Elgin, President (Address same as applicant). Government Agency involved: General Services Administration.

GT–335–80 (Special Certificate—Government Traffic), filed April 25, 1980. Applicant: APPROVED TRANSPORTATION, 7261 Ethel Avenue, North Hollywood, CA 91605. Representative: David Earl Tinker, Esq., 1000 Connecticut Ave. NW., Suite 1200, Washington, D.C. 20036. Government Agency involved: Department of Defense.

GT–336–80 (Special Certificate—Government Traffic), filed April 25, 1980. Applicant: DEATON, INC., 317 Ave. W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, D.C. 20014. Government Agency involved: Agencies listed in U.S. Government Manual (1979–80 edition).

GT–337–80 (Special Certificate—Government Traffic), filed April 25, 1980. Applicant: NEW PENN MOTOR EXPRESS, INC., P.O. Box 630, Lebanon, PA 17042. Representative: S. Harrison Kahn, Attorney, Suite 733, Investment Bldg., Washington, D.C. 20005. Government Agency involved: Department of Defense.

GT–338–80 (Special Certificate—Government Traffic), filed April 25, 1980. Applicant: BIGGE DRAYAGE CO., P.O. Box 1657, San Leandro, CA 94577. Representative: R. A. Doty, Director of Commerce and Traffic (Address same as applicant). Government Agency involved: Departments of Agriculture, Commerce, Defense, Energy, Interior, Transportation and Treasury; National Aeronautics and Space Administration, Nuclear Regulatory Commission.

GT–339–80 (Special Certificate—Government Traffic), filed April 25, 1980. Applicant: TENNESSEE STEEL HAULERS, INC., 219 Whitsett Ave., Nashville, TN 37210. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, D.C. 20014. Government Agency involved: Agencies listed U.S. Government Manual (1979–80 edition).

GT–340–80 (Special Certificate—Government Traffic), filed April 25, 1980. Applicant: TENNESSEE CARTAGE CO., INC., 1238 Antioch Pike, Nashville, TN 37202. Representative: Henry E. Seaton, Suite 929—Pennsylvania Bldg., Pennsylvania Ave. & 13th St. NW., Washington, D.C. 20004. Government Agency involved: Department of Defense and General Services Administration.

GT–341–80 (Special Certificate—Government Traffic), filed April 26, 1980. Applicant: Golden Worldwide Van Service, Inc., 433 Airport Blvd.—Suite 201, Burlingame, CA 94010. Representative: John Paul Fischer, Esq., Silver, Rosen, Fischer & Stecher, P.C., 256 Montgomery St., 5th Floor, San Francisco, CA 94104. Government Agency involved: Departments of Defense, Agriculture, Interior, and Commerce; Nuclear Energy Regulatory Commission, Commodity Futures Trading Commission, General Services Administration, National Aeronautics and Space Administration, Department of Transportation, Federal Aviation Administration.

GT–342–80 (Special Certificate—Government Traffic), filed April 26, 1980. Applicant: Continental Van Lines, Inc., P.O. Box 2169, Monterey, CA 93940. Representative: Michael J. Stecher, Esq., Silver, Rosen, Fischer & Stecher, P.C., 256 Montgomery St., 5th Fl., San Francisco, CA 94104. Government Agency involved: Department of Defense.

GT–343–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: Safe Transportation Co., 6834 Washington Ave. South Eden Prairie, MN 55344. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Government Agency involved: Departments of Defense and Agriculture, General Services Administration.

GT–344–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: Equity Transportation Company, Inc., 3653 Lake Eastbrook Blvd. S.E., Grand Rapids, MI 49506. Representative: Edward Malinzak, Warner, Norcross & Judd, 900 Old Kent Bldg., Grand Rapids, MI 49503. Government Agency involved: Internal Revenue Service, Government Printing Office, Departments of Treasury and Defense, General Services Administration and Veterans Administration.

GT–345–80 (Special Certificate—Government Traffic), filed April 21, 1980. Applicant: Eugene Lavelle and Eugene Lavelle, Jr., d.b.a. Lavelle's Express, 270 North Sherman Street Wilkes-Barre, PA 18702. Representative: John W. Frame, ICC Practitioner, P.O. Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. Government Agency involved: Departments of Defense and Agriculture and General Services Administration.

GT–346–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: Maislin Transport Ltd., 7401 Newman Blvd., La Salle, Quebec H8N 1X4 Canada. Representative: Edward L. Nehez, P.O. Box 1409, Fairfield, NJ 07006. Government Agency involved: Departments of Defense, Transportation, Agriculture, Energy, and Health Education and Welfare; General Services Administration, National Aeronautics and Space Administration, Veterans Administration, Internal Revenue Service, Government Printing Office.

GT–347–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: Gateway Transportation Co., Inc., 455 Park Plaza Drive, La Crosse, WI 54601. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Government Agency involved: Departments of Defense, Transportation, Agriculture, Energy, and Health Education, and Welfare; General

Services Administration, National Aeronautics and Space Administration, Veterans Administration, Internal Revenue Service, Government Printing Office.

GT–348–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: Freedom Freightways, Inc., P.O. Box 5850, St. Louis, MO 63134. Representative: Raymond Ellsworth (same address as applicant). Government Agency involved: Agencies listed in U.S. Government Manual (1979–80 edition).

GT–349–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: Still Transfer Company, Inc., 632 Boone Street, Kingsport, Tenn. 37660. Representative: Melba S. Gilliam (Address same as applicant). Government Agency involved: Department of Defense.

GT–350–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: BAYOU STATE TRUCKING, INC., 639 South Rendon St., New Orleans, LA 70119. Representative: Brian S. Stern, Stern & Jones, 2425 Wilson Blvd., Suite 367, Arlington, VA 22201. Government Agency involved: Department of Defense, General Services Administration.

GT–351–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: NEW ENGLAND TRANSPORT, INC., LTD., P.O. Box 27, Chester Depot, VT 05144. Representative: Brian S. Stern, Stern & Jones, 2425 Wilson Blvd., Suite 367, Arlington, VA 22201. Government Agency involved: Departments of Defense, Transportation, Internal Revenue Service, and General Services Administration.

GT–352–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: C & T TRUCKING, INC., 1050 Brookside Drive, Richmond, CA 94806. Representative: Brian S. Stern, Stern & Jones, 2425 Wilson Blvd., Suite 367, Arlington, VA 22201. Government Agency involved: Department of Defense and General Services Administration.

GT–353–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: OSBORNE TRUCK LINES, INC., 516, 31st St. North, Birmingham, AL 35202. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203. Government Agency involved: Department of Defense and General Services Administration.

GT–354–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., 4015 Guasti Rd. P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (address same as applicant). Government Agency involved: Agencies listed in U.S. Government Manual (1979–80 edition).

GT–355–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: HEAVY HAULING, INC., 1100 West Grand P.O. Box 937, Salina, KS 67401. Representative: Clyde N. Christey, 1010 Tyler St.—Suite 110–L, Topeka, KS 66612. Government Agency involved: Department of Defense.

GT–356–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: THEODORE ROSSI TRUCKING CO., INC., 9 South Vine St., P.O. Box 332, Barre, VT 05641. Representative: William L. Rossi (address same as applicant). Government Agency involved: Agencies listed in U.S. Government Manual (1979–80 edition).

GT–357–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: AAA TRANSPORTATION INC., 2957 South East St., Indianapolis, IA 46206. Representative: David A. Turano, Esq., Baker & Hostetler, Suite 1800, 100 E. Broad St., Columbus, OH 43215. Government Agency involved: Department of Defense and General Services Administration.

GT–358–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: HAGEN, Inc., P.O. Box 98, Leeds Sta., Sioux City, IA 51108. Representative: Joseph B. Davis (address same as applicant). Government Agency involved: Agencies listed in U.S. Government Manual (1979–80 edition).

GT–359–80 (Special Certificate—Government Traffic), filed April 29, 1980. Applicant: THE JAMES GIBBONS CO., P.O. Box 253, Annapolis Junction, MD 20701. Representative: William F. King, Esq., P.O. Box 11278, Alexandra, VA 22312. Government Agency involved: Agencies listed in U.S. Government Manual (1979–80 edition)

GT–360–80 (Special Certificate—Government Traffic), filed April 29, 1980. Applicant: NATIONWIDE TRUCK LINES, INC., P.O. Box 609, Ennis, TX 75119. Representative: William J. Lippman, Suite 330 Steele Park, 50 S. Steele St., Denver CO 80209. Government Agency Involved: Department of Defense.

GT–361–80 (Special Certificate—Government Traffic), filed April 29, 1980. Applicant: E. E. HENRY, INC., 1128 S. Military Highway, Chesapeake, VA 23320. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Bldg., 666 Eleventh St. N.W., Washington, D.C. 20001. Government Agency involved: General Services Administration, Departments of Defense, Agriculture, Transportation, Energy, and Interior; National Railroad Passenger Service Corp., Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service, U.S. Government Printing Office.

GT–362–80 (Special Certificate—Government Traffic), filed April 29, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 So. Oldham St., Baltimore, MD. 21224. Representative: William F. Lamperelli (address same as applicant). Government Agency involved: Department of Defense.

GT–363–80 (Special Certificate—Government Traffic), filed April 30, 1980. Applicant: POLAR TRANSPORT, INC., 176 King St., P.O. Box 44, Hanover, MA 02339. Representative: A. S. Cotta, President (address same as above). Government Agency involved: Internal Revenue Service, Departments of Agriculture, Treasury, Federal Prison Industries, General Services Administration, U.S. Government Printing Office, U.S. Postal Service and Veterans Administration.

GT–364–80 (Special Certificate—Government Traffic), filed April 28, 1980. Applicant: HASKINS & SON, INC., 815 Max Ave., Lansing, MI 48915. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Government Agency involved: Department of Defense and General Services Administration.

GT–365–80 (Special Certificate—Government Traffic), filed April 29, 1980. Applicant: A & D MOVING & STORAGE CO., INC., 250 Globe St., Radcliff, KY 40160. Representative: Clarence Duggins (address same as applicant). Government Agency involved: Departments of Defense and Transportation, General Services Administration.

GT–366–80 (Special Certificate—Government Traffic), filed March 28, 1980. Applicant: DONNA MURRY, d.b.a. Dame Transportation, P.O. Box 707, Bandon, OR 97111. Representative: Donna Murry, 605 Matmor Rd., Woodland, CA 95695. Government Agency involved: Department of Defense, General Services Administration.

GT–367–80 (Special Certificate—Government Traffic), filed April 29, 1980. Applicant: CARTHAGE FREIGHT LINES, INC., P.O. Box 315, Carthage, TN 37030. Representative: Henry E. Seaton, Suite 929 Pennsylvania Bldg.,

Pennsylvania Ave. & 13th St. N.W., Washington, D.C. 20004. Government Agency involved: Department of Defense, General Services Administration.

GT-368-80 (Special Certificate—Government Traffic), filed April 30, 1980. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. N.W., Washington, D.C. 20005. Government Agency involved: Departments of Defense, Agriculture, Energy, Interior, General Services Administration, Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service, and U.S. Government Printing Office.

GT-369-80 (Special Certificate—Government Traffic), filed April 30, 1980. Applicant: K. G. MOORE, INC., 9 Park Avenue, Hudson, NH 03051. Representative: Robert G. Parks, 20 Walnut St.—Suite 101, Wellesley Hills, MA 02181. Government Agency involved: General Services Administration.

GT-370-80 (Special Certificate—Government Traffic), filed April 30, 1980. Applicant: DIC SIMON TRUCKING, INC., P.O. Box 26724, Salt Lake City, UT 84117. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., NW., Washington, D.C. 20005. Government Agency involved: Departments of Defense, Agriculture, Energy, and Interior, General Services Administration, Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service, and U.S. Government Printing Office.

GT-371-80 (Special Certificate—Government Traffic), filed April 30, 1980. Applicant: R. C. MOORE, INC., Box 346, Waldoboro, ME 04572. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, D.C. 20005. Government Agency involved: Department of Defense, Agriculture, Energy, and Interior, General Services Administration, Tenness Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service, U.S. Government Printing Office.

GT-372-80 (Special Certificate—Government Traffic), filed April 30, 1980. Applicant: PAN AMERICAN VAN LINES, INC., 18420 So. Santa Fe Ave., P.O. Box 923, Long Beach, Calif. 90801. Representative: W. C. Fogle, Vice President (address same as applicant). Government Agency involved: Agencies listed in U.S. Government Manual (1970-80 edition).

GT-373-80 (Special Certificate—Government Traffic), filed May 1, 1980. Applicant: GRAVES TRUCK LINE, INC., P.O. Drawer 1387, 2130 South Ohio Ave., Salina, KS 67401. Representative: Bruce A. Bullock, Vice President (address same as applicant). Government Agency involved: Departments of Defense, Agriculture, and Treasury; U.S. Post Office, Dept. of Facilities, and General Services Administration.

GT-374-80 (Special Certificate—Government Traffic), filed May 1, 1980. Applicant: WINSTON CARRIERS INC., P.O. Box 347, Double Springs, AL 35553. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666, 11th St. N.W., Washington, D.C. 20001. Government Agency involved: General Services Administration, Departments of Defense, Agriculture, Transportation, Energy, and Interior; National Railroad Passenger Service Corporation, Tennessee Valley Authority, National Aeronautics and Space Administration, U.S. Postal Service, and U.S. Government Office.

GT-375-80 (Special Certificate—Government Traffic), filed May 1, 1980. Applicant: C.O.D.E., INC., 4800 Colorado Blvd., Denver, CO 80216. Representative: Carol S. Raznick, Feuer, Flossic and Rich, 820 Clermont St.—Suite 100, Denver, CO 80220. Government Agency involved: Departments of Defense, Treasury, and Agriculture; Bureau of Indian Affairs, General Services Administration, Post Office Department, U.S. Government Printing Office, and Veterans Administration.

GT-376-80 (Special Certificate—Government Traffic), filed May 1, 1980. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Government Agency involved: Department of Defense.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-15874 Filed 5-22-80; 8:45 am]

BILLING CODE 7035-01-M

[Order No. 68; Under Service Order No. 1344]

Rerouting of Traffic

To: Illinois Central Gulf Railroad Company.

In the opinion of Joel E. Burns, Agent, Illinois Central Gulf Railroad Company, is unable to transport promptly all traffic offered for movement at Natchez, Mississippi, because of track conditions.

It is ordered,

(a) *Rerouting traffic.* Illinois Central Gulf Railroad Company, being unable to transport promptly all traffic offered for movement at Natchez, Mississippi, because of track conditions, that line and its connections are authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 1:00 p.m., May 13, 1980.

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 22, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall

be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 13, 1980.
Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 80-15872 Filed 5-22-80; 8:45 am]

BILLION CODE 7035-01-M

[Amendment No. 2 to ICC Order No. 55 Under Service Order No. 1344]

Rerouting Traffic

To: All Railroads.

Upon further consideration of ICC Order No. 55, and good cause appearing therefor:

It is ordered,

I.C.C. Order No. 55 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., August 15, 1980, unless otherwise modified, amended or vacated.

Effective date. This amendment shall become effective at 11:59 p.m., May 15, 1980.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 15, 1980.
Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 80-15873 Filed 5-22-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Announcement of Amendments to a Previously Announced Solicitation for Grant Applications by the National Institute for Juvenile Justice and Delinquency Prevention

On April 25, 1980, the Law Enforcement Assistance Administration published in the **Federal Register** an Announcement of a Solicitation for Grant Applications for the National Institute for Juvenile Justice and Delinquency Prevention's Minority Research Initiative (see Volume 45, Number 82, April 25, 1980, page 28005). This notice hereby amends that announcement as follows:

(1) A maximum of $925,000 is expected to be made available for fiscal years 1980 and 1981 for this initiative.

(2) Up to four separate grants will be made for 12–24 month budget periods.

These changes increased the number of projects, the length of budget periods and the amount of funds allocated under this program. This structure more accurately reflects the scope of the program and the expected continuity of effort.

(3) Deadlines for receipt of applications are extended to June 25, 1980, for Part I applications, and to July 3, 1980, for Part II applications.

This extension is intended to allow applicants additional time to respond to the solicitation.

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 80-15862 Filed 5-22-80; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-80-69-C]

Cannelton Industries, Inc.; Modification of Application of Mandatory Safety Standard

Cannelton Industries, Inc., P.O. Box 1226, 1250 One Valley Square, Charleston, West Virginia 25324, has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Nos. 3 and 4 mine located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. In the 4B section of the mine, petitioner has established duel, independent intake ventilation air courses to the face area.

2. Both the left and right splits from the 4B section are coursed into the gob and are unsafe for travel. Neither of the returns is designated as an escapeway.

3. As an alternative method, petitioner proposes to establish a check station at the last open crosscut on the section and at the number one overcast. Petitioner will monitor and establish the direction of the air flow on a daily basis in compliance with the standard.

4. Petitioner states that the proposed alternative method will at all times guarantee no less than the same measure of protection to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 12, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-15410 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-63-C]

Consolidation Coal Co.; Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.321 (stoppage of fans, plans) to its Bishop No. 34 Mine located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The mine is currently ventilated by four fans which are adequately ventilating the existing five sections of the mine.

2. The Daniel Mains, a projected section, is not provided with a bleeder system; therefore, a borehole was drilled and an additional fan was installed in lieu of the bleeder system.

3. Should this fan stop, petitioner states that positive ventilation will be maintained in this section of the mine and will take the following actions in the Daniel Mine areas:

a. Withdraw all persons from the Daniel Mains working sections;

b. Cut off the power in the areas in a timely manner;

c. Provide for restoration of power and resumption of work if ventilation is restored within a reasonable period after reexamination of the working places and other active workings where the methane is likely to accumulate;

d. Withdraw the miners back to the mouth of Pine Ridge and maintain constant communication between the dispatcher, mine foreman and section boss after the miners have been withdrawn; and

e. Provide for withdrawal of all persons from the areas if ventilation cannot be restored within a reasonable time.

4. Petitioner states that this proposed procedure will provide the same protection to the miners affected as that of the standard and requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at the address.

Dated: May 12, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 15409 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-65-C]

Milburn Colliery Co.; Modification of Application of Mandatory Safety Standard

Milburn Colliery Company, Burnwell, West Virginia 25034 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 4 Mine located in Fayette County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The mining height in petitioner's mine ranges from 40 to 50 inches with undulating top and bottom conditions.

2. The roof in this mine is comprised of sandy shale and solid sandstone.

3. The fire clay bottom develops severe ruts in the wet areas of the mine.

4. Petitioner states that installation and use of cabs or canopies on continuous miners, scoops, roof bolters, and shuttle cars used in this mine would result in a diminution of safety to the miners affected because:

a. The cab or canopy will reduce the size of the already small operator compartment, causing operator fatigue and forcing parts of the operator's body to protrude from the cab or canopy, exposing the operator to other moving equipment or objects;

b. Canopies installed will come in contact with the roof, destroying the roof control support system or suspended electrical cables; and

c. The canopy may hamper the rapid escape of the equipment operator in the event of an emergency.

5. As an alternative method which will guarantee the safety of the miners affected, petitioner proposes to:

a. Fix a minimum mining height for each type of machine, which defines minimum mining height as the minimum height from the floor of the mine to the bottom of the necessary roof support in which a certain type of equipment can safely operate with a canopy;

b. Apply the minimum mining height for each machine uniformly throughout the mine;

c. Install canopies on the mine's equipment wherever conditions in the mine permit its safe usage.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 12, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-15408 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-38-M]

Union Carbide Corp.; Modification of Application of Mandatory Safety Standard

Union Carbide Corporation, 270 Park Avenue, New York, New York 10017 has filed a petition to modify the application of 30 CFR 557.12-82 (insulation of powerlines) to its Pine Creek Mine located in Inyo County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the separation or insulation of power lines from water lines, telephone lines and air lines.

2. In an "Interpretation of Mandatory Standard" of February 12, 1975, issued by the Assistant Administrator of Metal/Nonmetal Mine Health and Safety, it was stated that; "Jacketing as provided on a power line by the manufacturer is not adequate for the insulating purposes of Federal Mandatory Standards 55, 56, 57.12-82. Additional insulation or separation must be provided. If power lines contact air lines, water lines, and telephone lines, additional insulation must be provided at the point(s) of contact. If the power line is separated but supported from air lines and water lines it must be supported with an insulated hanger or additional insulation must be provided at the point of suspension. Additional insulation means that installation in addition to the jacketing shall have a dielectric strength at least equal to the maximum applied voltage on the conductor."

3. As an alternative method of complying with the standard, petitioner states that the method outlined below provides the same or greater protection as that provided by the standard.

a. High voltage current is transmitted throughout the mine in "Anixter Interlocked Armor" or similar cable. This type cable has extensive insulation and armor layers which provide security from impact and abrasion basically similar to the protection provided by conduit, as verified by MSHA electrical investigators at the mine on January 8, 1980.

b. Thousands of feet of the cable exist in drifts, ramps and shafts of the mine and in many places the cable is secured to or touches steel sets, messenger cables, metal bolts, etc., which in turn contact air or water lines. the multiple insulation and armor layers on this cable provide protection far greater than necessary to provide necessary safety from any anticipated hazards where it is installed. The construction of the cable therefore provides the degree of additional insulation that was required in the "Interpretation" although the multiple layers of insulation and armor are combined in the integral cable package.

c. All low voltage cable is "Anixter Type SO" or similar type where each individual wire is separately insulated with 600V covering, and the multi conductors (3 or 4 wires) are further separated by fiber and then an outer insulation wrapper covers the entire package. This cable provides two layers of insulation, each capable of dielectric strength sufficient to protect in excess of the maximum voltage applied.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 12, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-15407 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-48-M]

AMAX Chemical Corp.; Petition for Modification of Application of Mandatory Safety Standard

AMAX Chemical Corporation, Post Office Box 279, Carlsbad, New Mexico 88220, has filed a petition to modify the application of 30 CFR 57.12-13 (splices in power cables) to its AMAX mine and mill located in Eddy County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition is directed toward splices which are in high voltage (4,160V) cables transmitting power to transformers (4,160V-440V) through the potash mine.

2. Conditions throughout the mine are extremely dry and all such cables are suspended from either the back or rib.

3. Coverings on individual conductor splices are dielectrically equal to or better than the original insulation. Grounded shielding is replaced on individual conductors.

4. Petitioner is currently initiating a practice of rubber-taping outer jacket cut-off points to form a tapered jacket that will help prevent possible damage to conductors from bending at those points. All surplus cable is stored in cable boats designed for that purpose. When cables are relocated, the splices are taken apart and remade when cables are installed at the new location.

5. Petitioner believes that rebuilding of an outer jacket over this particular type of splice could cause an unsafe condition by preventing periodic visual inspections of conductors and wires. This would make more difficult the detection with test equipment of any temperature rise from poorly made or loosened phase connections. The physical separation of the phase wires also decreases the possibility of tracking and arcing between phases.

6. Because the petitioner feels that an outer jacket will provide less safety in many cases, the petitioner requests a modification of the application of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 13, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-15898 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-43-M]

Independent Salt Co.; Petition for Modification of Application of Mandatory Safety Standard

Independent Salt Company, Post Office Box 36, Kanopolis, Kansas 67454 has filed a petition to modify the application of 30 CFR 57.19-124 (hoist ropes) to its mine located in Ellsworth County, Kansas. The petition is filed under section 101 (c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. As an alternative to cutting the hoist rope at least six feet above the highest connection to the conveyance at least once per year, petitioner states the following facts in support of the alternate method proposed which will provide the same measure of protection as that provided by the standard:

a. The suspension system is designed to prevent any additional rope stress in that area. All lateral movement is absorbed by the thimble and pin assemblies. Corrosion is prevented by careful maintenance and adequate usage of a good corrosion protection material.

b. No rope failure has occurred at the mine. As ropes have been repaired, petitioner has carefully examined the suspension system and has always found the rope in that section to be in better condition than the length that comes in contact with the sheaves.

c. In the past, as part of the regular maintenance and inspection programs, a contractor has performed a non-destructive rope test at least once per year. The contractor will now provide this service twice per year. A new cable is kept on hand and replaced as these tests indicate a need.

2. The required cut will cause the petitioner to lose a minimum of 18 feet per year and thereby shorten the rope life because of length.

3. The drum and feed slots are not designed to carry enough extra cable to sustain operable length for the rope's normal life span without overlapping.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 13, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-15899 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-66-C]

National Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

National Mines Corporation, 101 East Vine Street, P.O. Box 12022, Lexington, Kentucky 40511 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its National Pocahontas Mine located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The return entries for a distance of 4300 feet immediately adjacent to the return air shaft contain numerous roof falls which have rendered the return air courses virtually impassable and extremely hazardous to travel and examine.

2. These falls have not affected the quantity of air passing through the return airways are not designated as return escapeways.

3. As an alternative method which will provide the same measure of protection to the miners as that of the standard, petitioner proposes to:

a. Establish four monitoring stations at specified locations and maintain these stations in a safe condition at all times;

b. Record in a book kept on the surface the results of examinations of air quality, quantity and direction at each station;

c. Not allow harmful gases to accumulate in excess of legal limits. Significant increases in the methane level or a reduction in the air quantity will result in an immediate investigation;

d. Examine the mine fan daily and take weekly air readings and samples at that location.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at the address.

Dated: May 13, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-15900 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-67-C]

National Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

National Mines Corporation, 101 East Vine Street, P.O. Box 12022, Lexington, Kentucky 40511 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its National Pocahontas Mine located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The use of cabs and canopies on the mine's underground face equipment has been successful where the mining heights have exceeded 55 inches.

2. Present mining heights now range from 46 to 55 inches.

3. The use of cabs or canopies in the present mining height will result in a diminution of safety because:

a. The canopy strikes the mine roof, which destroys the roof support system;

b. A suspended cable struck by the canopy would result in fire or electric shock hazards;

c. The equipment operators' vision is severly impaired by the canopy and close confinement in the cab causes the operators' head, arms and legs to extend from beneath the canopy, which exposes the operators to the danger of being crushed between the equipment and the coal rib;

d. The confines of the canopy would hamper the rapid escape from the equipment in the case of an emergency.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 15, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-15901 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-73-C]

Slab Fork Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Slab Fork Coal Company, Slab Fork, West Virginia 25920 has filed a petition to modify the application of 30 CFR 75.305 (Weekly examinations for hazardous conditions) to its No. 8 Mine located near Tams, Raleigh County, West Virginia, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. The petitioner plans to use intake air from the No. 8 Portal to ventilate mining areas near the Portal. Air would be drawn through the mine with an exhaust fan located at the Bailey Branch Portal. This ventilation arrangement would continue until retreat mining for pillar recovery in the area is complete. The proposed mining will require about 6 months, after which the No. 8 Portal and the belt leading to the No. 2 Tipple will no longer be used.

2. The return airways from the main entries near No. 8 Portal to the Bailey Branch fan are considered not safe for physical examination under 30 CFR 75.305. As these airways have minor accumulations of water in them and the ribs are sloughing, maintenance of these return airways would expose miners unnecessarily to rib and roof fall hazards.

3. As an alternative to application of 30 CFR 75.305, the petitioner would course return air from working areas near the No. 8 Portal to the Bailey Branch fan without having to examine the return airways through which such air is coursed, but it would take daily air measurements at the Bailey Branch fan and in the active areas of the mine being worked from the No. 8 Portal; also, daily methane measurements will be made in these active areas. In addition, two separate escapeways would be maintained from the active workings to the surface to permit the miners to exit the mine in less than 10 minutes.

4. The petitioner states that examination of the return airways in their entirety would result in a diminution of safety to the miners required to perform the examinations.

5. The petitioner alleges that the alternative method will at all times guarantee no less than the same measure of protection afforded the miners by weekly examination of the return airways in the entirety from the main entries near the No. 8 Portal to the Bailey Branch fan.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 23, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 15, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-15902 Filed 5-22-80 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Application Nos. L-1669 through L-1672; Prohibited Transaction Exemption 80-33]

Exemption From the Prohibitions for Certain Transactions Involving the Commingled Pension Trust Fund—Common Stock, et al. Located in New York City, N.Y.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the acts of Morgan Guaranty Trust Company of New York (Morgan) in effectuating interaccount transfers of publicly traded common stock among the Commingled Pension Trust Fund—Common Stock, the Commingled Pension Trust Fund—Special Situation Investment, the Commingled Pension Trust Fund—Intermediate Capitalization Equities, and the Commingled Pension Trust Fund—Supplemental Opportunity (the Plans) which are managed by Morgan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216,

(202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 7, 1980, notice was published in the **Federal Register** (45 FR 14974) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) for effectuating by Morgan of certain interaccount transfers of publicly traded common stock among the Plans managed by Morgan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. One public comment was received by the Department which favored granting the exemption in the form in which it was proposed. In addition, Morgan submitted the following comment: "In paragraph 13 of the notice of pendency, it is stated in part that the inter-fund transfers of stocks to be effected by Morgan will be performed on a selected day within a 120-day period following the date Morgan receives its last applicable regulatory approval or exemption from the Department. Morgan believes that it may not be administratively feasible to make all of the transfers on a single day. Although Morgan will be able to select in advance a specific day for the transfer of a particular issue of common stock, Morgan requests that the final exemption provide that every issue need not be transferred on the same day." No requests for a hearing were received by the Department.

Upon consideration of the comments received, the Department has determined to grant the exemption as proposed with the exception that every issue of common stock need not be transferred on the same day.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a), 406 (b)(1) and (b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act, the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406(b)(2) of the Act shall not apply to the acts of Morgan in effectuating inter-account transfers of common stocks as described in the notice of pendency and incorporating the change described herein.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 19th day of May, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-15893 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1623]

Proposed Exemption for Certain Transactions Involving the Rodey, Dickason, Sloan, Atkin & Robb, P.A. Profit Sharing Plan and Trust, of Albuquerque, N. Mex.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan from the Rodey, Dickason, Sloan, Akin & Robb, P.A. Profit Sharing Plan and Trust (the Plan) to Rodey, Dickason, Sloan, Akin & Robb, P.A. (the Employer). The proposed exemption, if granted, would affect the Plan, the Employer and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before July 8, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–1623. The application for exemption and the comments received will be available for public inspection in the public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Stephen Elkins, of the Department of Labor, telephone (202) 523–8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the taxes imposed by

section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is a law firm, members of which are engaged in the general practice of law in Albuquerque, New Mexico. As of October 9, 1979, there were 103 employees of the Employer, 96 of whom were salaried, seven of whom were hourly.

2. The Plan is non-contributory, and covers all salaried employees of the Employer. As of the date of the application, there were 100 present and former employees who were participants in the Plan. Independent trustee of the Plan is The First National Bank in Albuquerque (the Bank). If the proposed exemption is granted, the independent trustee would have full discretion with respect to management, retention, or disposition of the Plan investment to which the exemption would be applicable.

3. As of August 31, 1979, the Plan had assets of $1,466,827.60. The average yield on Plan assets has been 4.4 percent, from the inception of the Plan.

The Employer traditionally has made an annual contribution to the Plan equal to 15 percent of the gross compensation of each Plan participant, subject to a cash option feature of the Plan which allows each participant to take in cash up to half of the contribution which otherwise would be made to the Plan on his behalf. The Employer intends to continue its practice of making 15 percent of gross compensation available as a contribution to the Plan.

4. The transaction for which an exemption is requested is a loan of $650,000.00 from the Plan to the Employer. Proceeds of the loan would be used by the Employer for purchase of furniture, fixtures, equipment and leasehold improvements needed for expansion of the Employer's office space, including purchase of an in-house computer for the Employer's use.

The proposed loan would be for a term of seven years, with interest alone payable through December, 1980, and with principal amortized in equal monthly installments over the remaining term. Deferred amortization of principal is desired for the purpose of orderly cash flow planning, inasmuch as another loan now outstanding to the Employer from an unrelated party will be fully amortized in December 1980.

Interest on the loan would be at 1.5 percent above the prime rate in New York, adjusted monthly. At no time during the term of the loan would the interest rate be less than 12.5 percent.

The loan would be secured in part by a first security interest in the improved leasehold which the Employer presently occupies, and which as expanded and further improved, it will continue to occupy after the loan is made. An appraisal by Joe F. Fritz Management, Inc., of Albuquerque places a value of approxitmately $500,000.00 on such leasehold as further improved by loan proceeds. Also securing the loan would be a first security interest in the furniture, fixtures, equipment, and library presently in place. Appraisals by New Mexico Office Furniture, of Albuquerque, Lanier Business Products, Inc., of Atlanta, Georgia, International Business Machines Corporation, of Albuquerque, and Ferguson Library Services, of Albuquerque place a value of approximately $350,000.00 on such existing furniture, fixtures, equipment, and library. Additional security for the loan would be provided through a first security interest in furniture, fixtures, equipment, and library acquired through loan proceeds or otherwise.

5. The applicant represents that the Employer would not encounter difficulities in meeting the principal and interest payments on the loan as due. Moreover, the 27 principals of the Employer have agreed to execute prorata guarantees per capita, assuring repayment of principal, plus interest on the loan. A senior officer of the Bank has stated that based on his familiarity with the principals of the Employer, if it should become necessary, collection from the principals in full according to terms of the guarantees would be possible, owing to the net worths of those principals.

6. The Bank, through a senior loan officer has made a commitment to the Employer to make a loan to the Employer on the same terms as the proposed loan from the Plan. However, if the Bank were to make the loan, the interest rate charged the Employer would be one-half a percentage point less than the interest to be charged the Employer by the Plan.

The Chief Administrative Officer of the Albuquerque National Bank (ABN) has stated that he is familiar with the terms of the proposed loan from the Plan to the Employer, and that he is aware that the Bank has made a commitment to make a loan to the Employer on the terms discussed immediately above. He further states that ABN does no business with the Employer or the Plan, and is not represented by the Employer. Without making a loan commitment as such, the Officer of ABN states that it is his opinion that ABN would make the loan to the Employer on the same terms as proposed by the Bank.

7. Based on the value of Plan assets determined as of August 31, 1979, the percentage of Plan assets initially invested in the loan would be approximately 36 percent, immediately after contribution to the Plan for the year 1979. Immediately after the contribution for the year 1980, the percentage of Plan assets invested in the loan would be approximately 28 percent.

8. The income earned by the Plan on the proposed loan would be allocated among the accounts of all participants in the Plan in exactly the same manner as any other income of the Plan.

9. The trustee has determined that the transaction is appropriate for the Plan, and is in the best interests of the participants and beneficiaries of the Plan.

The applicants represent that the transaction would meet the criteria of section 408(a) of the Act because (a) the loan would provide an investment opportunity more attractive than others currently available to the Plan, (b) the loan would be secured by collateral having a fair market value substantially in excess of the amount of the loan, (c) the principals of the Employer would guarantee repayment of the loan, (d) an independent fiduciary would have authority over the assets of the Plan invested in the loan, and (e) and unrelated party is of the opinion that it would make an identical loan to the Employer, but at a lesser rate of interest.

Notice to Interested Persons

Within two weeks of notice of the proposed exemption appearing in the **Federal Register**, notice of the proposed exemption will be provided to all present employees, whether or not then participants in the Plan and all former employees and beneficiaries who have any undistributed account balances in

the Plan. Such notice will include a copy of the Notice of Pendency and also will inform each person to whom notice is given of his right to comment on the application and to request that a hearing be held with respect to the proposed exemption. Notice to present employees will be given by posting on the employee bulletin board, and by circulation through inter-office memo to each employee. Notice will be given to each former employee or beneficiary by mailing such notice to his last known address.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require that a fiduciary discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of a loan of $650,000.00 from the Plan to the Employer, the proceeds of which are to be used for the purchase of furniture, fixtures, equipment and leasehold improvements, according to the terms and conditions as specified hereinabove, provided that the terms of the loan are not less favorable to the Plan than those obtainable from an unrelated party at arm's length at the time of consummation of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 15th day of May, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–15894 Filed 5–22–80; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–1539]

Proposed Exemption for Certain Transactions Involving Southwest Chemical Services Incorporated Profit Sharing Plan Located in Houston, Tex.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale for cash of an account receivable by the Southwest Chemical Services Incorporated Profit Sharing Plan (the Plan) to Southwest Chemical Services Incorporated (the Employer), a party in interest. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan and the Employer.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before June 30, 1980.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective September 6, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–1539. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas, of the Department of Labor, telephone (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in

accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Effective April 14, 1978, the Employer became a wholly owned subsidiary of Thiokol Corporation (Thiokol). Pursuant to terms of the merger agreement, each shareholder of the Employer was to receive cash from Thiokol in exchange for surrendering stock of the Employer. An exchange and escrow agreement was executed between Thiokol and the Employer which provided that after the effective date of the merger, Texas Commerce Bank National Association (the Bank) would act as agent for Thiokol and the former shareholders of the Employer for the disbursement of the proceeds in exchange for the stock of the Employer.

2. On April 17, 1978, the effective date of the merger, the sum of $22.25 per share was paid to the Bank by Thiokol for each share of stock of the Employer. Subsequently, the Bank paid each former holder of Employer stock an amount equal to $17.80 per share. The remaining $4.45 per share was held by the Bank pursuant to the terms of the escrow agreement to indemnify Thiokol against possible losses or liabilities as a result of the breach of certain warranties and representations made by the Employer. The escrow agreement provided that on May 22, 1978, if there were no misrepresentations, former shareholders of the Employer could expect to receive from the Bank an amount equal to $2.23 per share of common stock previously owned, then $1.71 per share on December 18, 1978 and $.51 per share on or about April 18, 1981. The amounts due on May 22, 1978 and December 18, 1978 were paid. The only amount remaining unpaid to date is the $.51 per share payable on or about April 18, 1981.

3. The Plan owned 6,666 shares of common stock of the Employer and was therefore due to receive the $.51 per share distribution in April 1981. The Plan, however, was terminated effective April 1, 1979. In order to facilitate the cash distribution of all the Plan's assets which took place on or about October 4, 1979, the Employer purchased the account receivable due the Plan on its former Employer stockholdings. The purchase of the account receivable took place on September 6, 1979, for $4,335.18 in cash.

4. The applicant represents that the Employer, by purchasing the account receivable, removed any risk of loss to the Plan. The sales price of $4,335.18 represents the final escrow payment of $.51 per share due on April 18, 1981, plus an interest earnings factor based on the rate the Bank was earning for the escrow account. No discount to a present value was made from the estimated gross future value in deriving the sales price of the account receivable. If the Plan had been required to distribute the account receivable in undivided interests, the administrative costs would have been excessive.

5. On August 24, 1979, the Internal Revenue Service issued a favorable determination letter with respect to the termination of the Plan.

6. In summary, the applicant represents that the transaction meets the statutory criteria for an exemption under section 408(a) of the Act because (1) it is a one time transaction for cash; (2) the Plan realized a profit on the sale and no discount was taken; (3) any risk of loss in holding the account receivable, pursuant to the escrow agreement, was removed; (4) the Plan did not incur administrative costs which would have transpired in distributing the account receivable in undivided interests to the Plan participants; and (5) the trustee has determined that the transaction was appropriate for the Plan and was in the best interest of the Plan's participants and beneficiaries.

Notice to Interested Persons

Within ten days of the publication of the notice of pendency in the **Federal Register**, notice of this request will be posted at the locations normally used by the Employer for posting notices to employees. Terminated participants and beneficiaries who have the right to receive benefits from the Plan will be notified by mail. The notice will include a copy of the notice of pendency alone with a statement advising interested persons of their right to comment and request a hearing within the time period set forth in the notice of pendency.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under Section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is

considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale of an account receivable by the Plan to the Employer on September 6, 1979, provided that the sales price was not less than the fair market value of the account receivable at the time of consummation of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the proposed exemption.

Signed at Washington, D.C., this 20th day of May, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–15895 Filed 5–22–80; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 80–26]

Class Exemption for Certain Interest Free Loans to Employee Benefit Plans

AGENCY: Department of Labor.

ACTION: Grant of class exemption; correction.

SUMMARY: In FR Doc. 80–12872 appearing at page 28545 in the **Federal Register** of April 29, 1980, the title is corrected to include the words "[Prohibited Transaction Exemption 80–26]" on a separate line proceding the words "Class Exemption for Certain Interest Free Loans to Employee Benefit Plans."

Signed at Washington, D.C., this 14th day of May 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–15488 Filed 5–22–80; 8:45 am]

BILLING CODE 4510–20–M

Office of the Secretary

[TA–W–6547]

Chrysler Corp., Trenton Engine Plant; Trenton, Mich; Negative Determination Regarding Application for Reconsideration

By an application dated March 7, 1980, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of the Trenton Engine Plant of Chrysler Corporation, Trenton, Michigan. The determination was published in the **Federal Register** on February 12, 1980, (45 FR 9400).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the determination.

In denying the workers of the Trenton Engine Plant of Chrysler Corporaton eligibility to apply for adjustment assistance, the Department concluded that increases of imports of articles like or directly competitive with the automobile engines produced at the Trenton Engine Plant did not contribute importantly to the separation of workers and to the decline in production at that facility. The union, in its application for reconsideration, challenges this conclusion and argues that the Department failed to consider adequately several major factors in its analysis of the employment and production declines. The union argues: (1) that the progression of the Chrysler Corporation toward production of smaller and more fuel-efficient automobiles, and the production and employment dislocations inherent in such progression, resulted in large part from the competitive pressures of small car imports; (2) that the Trenton Engine Plant's share of total Chrysler Corporation engine production steadily declined from MY 1977 through MY 1979 though the share of foreign-produced engines increased during the same period; (3) contrary to the Department's statements, employment at the Trenton Engine Plant did not stabilize during 1979 and significant employment declines have occurred in the first quarter of 1980; and (4) that because the Department has issued certifications to workers of several Chrysler Corporation auxiliary production facilites similar to the Trenton Engine Plant, consistent application of the Act requires that the Department also issue a certification to the workers of the Trenton Engine Plant.

In the course of its investigation, the Department did consider the effects of small car imports on production and employmnent at the Trenton Engine Plant. However, it was determined that the dominant cause of the layoffs at the plant was the discontinuation of a major Trenton Engine Plant product line, the 400 and 440 CID V–8 engines. Consumer and governmental pressure on the fuel-economy standards of the U.S. automobile industry over the past several years has resulted in specified minimums for fuel economy which are to be determined on the basis of corporate average. In attempting to meet these new standards, Chrysler discontinued production (September 1978) of their two largest engines. The Trenton Engine Plant was the only Chrysler facility which produced the 400 and 440 CID V–8 engines and none was imported.

In place of the large V–8 engines, Chrysler Corporation has emphasized the production of the 225 CID 6-cylinder and the 1.76 liter 4-cylinder engines. Production of the 6-cylinder engine at the Trenton Engine Plant has been increased as a result of Chrysler Corporation's decision to use the 6-cylinder engine rather then the 8-cylinder engine as standard equipment in its standard-size car lines for MY 1980 and of the consolidation of Chrysler Corporation's 6-cylinder engine production from the facilities in Canada and Mexico to the Trenton Engine Plant. Thus, production of 6-cylinder engines at the Trenton Engine Plant increased in MY 1979 compared with MY 1978 and in the August–December period of 1979 relative to the same period in 1978. Similarly, the number of 4-cylinder engines finished at the Trenton Engine Plant from imported semi-finished engines increased in MY 1979 compared with MY 1978 and during the August-December period of 1979 relative to the same period in 1978. In addition, Chrysler Corporation is currently retooling the Trenton Engine Plant for full-scale production of a Chrysler-designed 2.2 liter 4-cylinder engine.

The union's argument that foreign production facilities have gained a greater share of Chrysler Corporation engine production while the Trenton

Engine Plant was losing its share is not relevant to a determination in this case. The union claims that increases in imports by Chrysler Corporation of the 360 CID V–8 and semi-finished 4-cylinder engines contributed importantly to the discontinuation of production of 400 and 440 CID V–8 engines. However, as noted above, the Deparment found on investigation that the dominant cause of the production and employment declines at the Trenton Engine Plant has been Chrysler Corporation's engine production reorganization as part of its effort to meet fuel-economy standards. In addition, the union's claim here is based on the premise that an automobile engine is like or directly competitive with any other automobile engine which, the union submits, is merely an extension of the Department's policy of considering automobiles of various sizes like or directly competitive with one another. The Department, to the contrary, has held consistently that automobiles of different sizes and characteristics only compete with one another within definite limits, i.e., that a given automobile is not like or directly competitive with every other automobile. This contention of the union notwithstanding, it should be noted that imports of the semi-finished 4-cylinder engines represent an addition to production at the Trenton Engine Plant since completed 4-cylinder engines have not been produced there in the past.

Employment at the Trenton Engine Plant became relatively stable in the January–November period of 1978 following the series of major layoffs due to the discontinuation of 400 and 440 CID V–8 engine production. Employment levels, measured on a monthly basis, were variable during this period though no more variable than should be expected from such factors as inventory adjustment and summer vacation replacements. Declines in employment after November 1979 occurred subsequent to the Department's investigation and, therefore, are not relevant to this determination.

Finally, the fact that the Department has issued certifications to workers at other Chrysler Corporation facilities does not require that the Department also certify the workers of the Trenton Engine Plant. The Department conducted a specific investigation for every identifiable worker group, i.e., the workers of the Trenton Engine Plant were considered as a group distinct from, for example, the Detroit Universal Plant. Such a targeted investigation is both consistent with the Act and desirable since it allows the identification of factors causing production and employment declines at each facility and the discernment of whether these factors are import-related.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 15th day of May 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-15829 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-28-M

Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of negative determinations regarding eligibility to apply for worker adjustment assistance issued during the period May 12–16th, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA–W–7359; Alma Foundations, Inc., Oswego, N.Y.

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the International Ladies' Garment Workers Union on behalf of workers at the Oswego, New York plant of Alma Foundations, Incorporated. Workers at the Oswego, New York plant produced corsets and briefs.

The investigation revealed that criterion (3) has not been met.

A Departmental survey of customers of Alma Foundations revealed that those customers who decreased purchases from Alma in 1979 compared to 1978 did not purchase imported corsets and briefs. Also, the survey revealed that the responding customers increased markedly their demand for domestically produced corsets and briefs in 1979 compared to 1978.

In this case, therefore, the certification officer has determined that all workers of the Oswego, New York plant of Alma Foundations, Incorporated are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7204; Al Weiss Lincoln-Mercury d.b.a. Joe Jordan Lincoln-Mercury, St. Louis, Mo.

The investigation was initiated on February 25, 1980, in response to a worker petition which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers at Al Weiss Lincoln-Mercury d.b.a. Joe Jordan Lincoln-Mercury, St. Louis, Missouri. The workers at Joe Jordan Lincoln-Mercury are engaged in providing the service of automobile sales and service.

The investigation revealed that workers of Joe Jordan Lincoln-Mercury do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Joe Jordan Lincoln-Mercury by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Joe Jordan Lincoln-Mercury and its suppliers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company which produces an article.

All workers engaged in automobile sales and service at Joe Jordan Lincoln-Mercury are employed by that firm. All personnel actions and payroll transactions are controlled by Joe Jordan Lincoln-Mercury. All employee benefits are provided and maintained by Joe Jordan Lincoln-Mercury. Workers are not, at any time, under employment or supervision by suppliers of Joe Jordan Lincoln-Mercury. Thus, Joe Jordan

Lincoln-Mercury and not any of its suppliers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Al Weiss Lincoln-Mercury d.b.a. Joe Jordan Lincoln-Mercury, St. Louis, Missouri are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7425; Bluestone Coal Corp., Keystone Strip Mine, Keystone, W. Va.

The investigation was initiated on March 24, 1980 in response to a petition which was filed by the United Mine Workers of America on behalf of workers at Bluestone Coal Corporation, Keystone Strip Mine, Keystone, West Virginia. The workers produce metallurgical coal.

The investigation revealed that criterion (3) has not been met.

The petition was filed on behalf of workers engaged in employment related to the mining of metallurgical coal. In accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2 a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Imports of coke and imports of metallurgical coal should be considered in determining import injury to workers mining metallurgical coal.

U.S. imports of metallurgical coal decreased absolutely and relative to demestic production in 1979 compared to 1978. U.S. imports of coal are negligible in the domestic market. U.S. imports of coke decresed absolutely and relative to domestic production in 1979 compared to 1978 and in January-February 1980 compared to January-February 1979.

Bluestone's sales of metallurgical coal increased during non-strike periods in 1979 compared to the same periods in 1978 and increased in the first quarter of 1980 compared to the first quarter of 1979.

In this case, therefore, the certifying officer has determined that all workers of Bluestone Coal Corporation, Keystone Strip Mine, Keystone, West Virginia be denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7383; Capri Coat Corp., New York, N.Y.

The investigation was initiated on March 17, 1980 in response to a petition which was filed on behalf of workers at Capri Coat Corporation, New York, New York. Workers at Capri Coat Corporation produce women's coats.

The investigation revealed that criterion (3) has not been met.

U.S. imports of women's, misses' and children's coats and jackets decreased absolutely from 1978 to 1979.

A Department survey of customers of Capri Coat Corporation revealed that most customers which reduced purchases of coats from Capri did not increase purchases of coats from foreign sources. As a percentage of total demand for coats by the responding customers, imports decreased from 1978 to 1979.

In this case, therefore, the certifying officer has determined that all workers of Capri Coat Corporation, New York, New York are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7342; Cannelton Industries, Inc.; Pocahontas Division; Superior, W. Va.

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the United Mine Workers of America on behalf of workers at Cannelton Industries, Incorporated, Pocahontas Division, Superior, West Virginia. The workers mine metallurgical coal.

The investigation revealed that criterion (3) has not been met.

U.S. imports of metallurgical coal decreased in 1979 compared to 1978.

Cannelton Industries, Incorporated is a wholly owned subsidiary of Algoma Steel Corporation, Limited, a Canadian firm. All of the coal produced at the Pocahontas Division of Cannelton Industries is exported to Algoma facilities, none of which are in the United States.

In this case, therefore, the certifying officer has determined that all workers of Cannelton Industries, Incroporated, Pocahontas Division, Superior, West Virginia are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7534; Christopher Dyeing & Finishing Co., Inc.; Paterson, N.J.

The investigation was initiated on March 31, 1980 in response to a petition which was filed by the Teamsters Union, Local 84 on behalf of workers at Christopher Dyeing and Finishing Company, Incorporated, Paterson, New Jersey. The workers dye and finish textiles.

U.S. imports of finished fabric increased absolutely and relative to domestic production in 1978 compared to 1977.

The Department of Commerce survey revealed that customers representing a significant proportion of Christopher Dyeing and Finishing Company, Incorporated's sales declines have decreased purchases from the subject firm and increased purchases of imported finished fabric in 1979 compared to 1978.

The Department of Commerce certified Christopher Dyeing and Finishing Company, Incorporated eligible for firm adjustment assistance on February 8, 1980 (project number F-NJ-0887).

In this case, therefore, the certifying officer has determined that:

"All workers of Christopher Dyeing and Finishing Company, Incorporated, Paterson, New Jersey who became totally or partially separated from employment on or after March 24, 1979 and before November 1, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974. All workers who became totally or partially separated from employment on or after November 1, 1979 are denied eligibility to apply for adjustment assistance."

TA-W-7316; Collins & Catlin, Inc., Port Huron, Mich.

The investigation was initiated on March 10, 1980 in response to a petition which was filed on behalf of workers at Collins and Catlin, Inc., Port Huron, Michigan. The workers at Collins and Catlin, Inc. are engaged in construction work.

The investigation revealed that workers of Collins and Catlin, Inc. do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Collins and Catlin, Inc. by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Collins and Catlin, Inc. and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in construction work at Collins and Catlin, Inc. are employed by that firm. All personnel actions and payroll transactions are controlled by Collins and Catlin, Inc. All employee benefits are provided and maintained by Collins and Catlin, Inc. Workers are not, at any time, under employment or supervision by customers of Collins and Catlin, Inc. Thus, Collins and Catlin, Inc. and not

any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Collins and Catlin, Inc., Port Huron, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-6257; Crane Co., Indian Orchard, Mass.

The investigation was initiated on December 26, 1979 in response to a petition which was filed on behalf of workers at Crane Company, Indian Orchard, Massachusetts. The workers produced steel castings and valves.

The investigation revealed that criteria (3) has not been met.

On the basis of additional information on the production process at the Indian Orchard, Massachusetts facilities, the Director, on his own motion, reopened investigation TA-W-6257.

The preponderance of all steel castings produced at the Indian Orchard foundry are used at the Indian Orchard Machine Shop in the production of valves.

Thus, the foundry and the machine shop form an integrated production unit, and therefore imports of both steel castings and valves must be considered in determining import injury to workers producing castings and valves at Indian Orchard.

U.S. imports of steel castings decreased relative to domestic shipments from 1977 to 1978. Although imports of castings increased absolutely and relative to domestic shipments in 1979 compared to 1978, the ratio of imports to domestic shipments was less than three percent. The ratio of valve impots to domestic shipments has not exceeded six percent during the period 1974 through 1979.

A Departmental survey of the customers of Crane Company, Indian Orchard revealed that the customers which decreased valve purchases from Crane, while increasing purchases of imported valves, represented an insignificant proportion of Crane Company's decline in valve sales.

In this case, therefore, the certifying officer has determined that all workers of Crane Company, Indian Orchard, Massachusetts are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-6857; Deansgate, Inc., New Orleans, La.

The investigation was initiated on January 28, 1980 in response to a petition which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers at Deansgate, Incorporated, New Orleans, Louisiana. Workers at the New Orleans plant produce men's suits and sportcoats.

The investigation revealed that criterion (3) has not been met.

U.S. imports of men's and boy's tailored dress coats and sportcoats and of men's and boys' tailored suits declined absolutely in 1979 compared with 1978.

The Department surveyed some of Deansgate's customers. Most customers either purchased no imported suits and sportcoats or increased their purchases from other domestic sources. Those customers that reduced purchases from Deansgate and increased imports accounted for an insignificant proportion of company sales.

In this case, therefore, the certifying officer has determined that all workers of the Deansgate, Incorporated, New Orleans, Louisiana are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7261; Evans Products Co., Forest-Fiber Products Group, Missoula Division, Missoula, Mont.

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the United Paperworker's International Union on behalf of workers at the Evans Products Company, Forest-Fiber Products Group, Missoula Division, Missoula, Montana. Workers at the Missoula plant produce and plywood lumber.

The investigation revealed that criterion (3) has not been met.

U.S. imports of softwood plywood increased absolutely in 1978 compared with 1977 and then decreased absolutely in 1979 compared with 1978. The ratio of imports to domestic production of softwood plywood was less than one percent during each year from 1975 through 1979.

Most of the surveyed customers of the Missoula Division indicated that they purchased no imported plywood in 1978, 1979 or the first three months of 1980. No respondents to the survey indicated that they increased purchases of imported plywood while decreasing purchases from the Missoula Division in 1979 compared with 1978 or in the first three months of 1980 compared with the same period of 1979.

The petitioners allege that imports of veneer, and earlier stage of production in the manufacture of plywood, at the Missoula Division caused layoffs at that facility. However, the investigation revealed that the Missoula Division was unable to obtain a sufficient supply of logs suitable for the plywood production process and veneer was imported to supplement, not replace, production at the Missoula Division. All veneer (both imported and that produced in-house) underwent further processing at the Missoula plant.

The petitioners also state that Evans has recently opened a new veneer-producing facility in a foreign country and allege that production is being transferred from the Missoula Division to foreign facilities. Currently, there is no evidence that company imports of plywood or veneer have increased as the result of a transfer of production to foreign facilities. However, the opening of the new foreign facility may create a situation in the future that may warrant coverage under the provisions of the Trade Act of 1974 if the transfer results in increased imports into the United States. The petitioners are encouraged to file a request to reopen the investigation when imports from the foreign operation have begun.

U.S. imports of softwood lumber increased absolutely and relative to domestic production in 1978 compared with 1977 and then decreased absolutely in 1979 compared with 1978. The ratio of imports to domestic production of softwood lumber remained at the same level in 1978 and 1979.

Surveyed customers of the Missoula Division indicated that they did not increase purchases of imported lumber and decrease purchases from the Missoula Division in 1979 compared with 1978 or in the first three months of 1980 compared with the same period of 1979. Respondents which reported increased purchases of imported lumber also reported increased purchases from the Missoula Division and other domestic sources.

In this case, therefore, the certifying officer has determined that all workers of the Evans Products Company, Forest-Fiber Products Group, Missoula Division, Missoula, Montana, are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7234; Federal Mogul Corp.; Sealing Products Group; Frankfort, Ind.

The investigation was initiated on March 3, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers at the Federal Mogul Corporation, Sealing Products Group, Frankfort, Indiana. The workers produce oil seals.

The investigation revealed that criterion (3) has not been met.

Petitioners allege that imports of automobiles and automotive equipment have adversely affected employment and production of oil seals at the

Federal Mogul Corporation, Sealing Products Group, Frankfort, Indiana. Imported automobiles and automotive equipment cannot be considered to be like or directly competitive with oil seals. Only imports of oil seals may be used in determining the eligibility to workers at the subject plant.

Imports of oil seals into the United States were negligible during the period 1975 through 1979.

In this case, therefore, the certifying officer has determined that all workers of the Frankfort, Indiana plant of Federal Mogul Corporation, Sealing Products Group, are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7349; Fedders Corp., Air Conditioning Division, Edison, N.J.

The investigation was initiated on March 17, 1980 in response to a petition which was filed on behalf of workers at Fedders Corporation, Air Conditioning Division, Edison, New Jersey. The workers produce air conditioners.

The investigation revealed that criterion (3) has not been met.

U.S. imports of air conditioners declined both absolutely and relative to U.S. production in 1979 compared to 1978. U.S. imports as a percentage of domestic production never exceeded 1.7 percent in the period 1977 to 1979.

The investigation further revealed that consumption of air conditioners is heavily dependent on new construction. The downturn in construction activities in 1979 served to weaken the demand for air conditioners.

In this case, therefore, the certifying officer has determined that all workers of Fedders Corporation, Air Conditioning Division, Edison, New Jersey are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7006, 7020, 7025, 7034, 7054, 7060, and 7069; General Motors Corp., Detroit, Mich.

The investigation was initiated on February 11, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) on behalf of workers at the following plants of General Motors Corporation:

Chevrolet Motor Division (TA–W–7006): Muncie, IN.
Fisher Body Division, Grand Rapids #1 (TA–W–7020): Grand Rapids, MI
Fisher Body Division, (TA–W–7025): Lordstown, OH.
Fisher Body Division, General Offices (TA–W–7034): Warren, MI.
New Departure, Hyatt Division (TA–W–7054): Bristol, CT.
Hydra-matic Division (TA–W–7060): Ypsilanti, MI.
Central Foundry Division (TA–W–7069): Massena, NY.

Evidence developed during the course of the investigation revealed that criterion (2) has not been met at the Muncie, Indiana, Grand Rapids, Michigan, Lordstown, Ohio, Warren, Michigan, Bristol, Connecticut, Ypsilanti, Michigan and Massena, New York plants of the General Motors Corporation.

At each of these facilities, plant production increased in model year 1979 compared to model year 1978 and increased in first four months of model year 1980 compared to the same period in model year 1979.

Evidence developed during the course of the investigation revealed that criterion (3) has not been met at the General Offices, Warren, Michigan.

Employment at the General Offices increased from model year 1978 to model year 1979. Employment declunes which occurred during the fourth quarter of model year 1979 compared to the same quarter of model year 1978 and in the first five months of model year 1980 compared to the same period of model year 1979 were an insignificant proportion of total employment and of short duration. Labor turnover data revealed that recalls exceeded layoffs in the last quarter of model year 1979 and in the first five months of model year 1980.

In this case, therefore, the certifying officer has determined that all workers of the Muncie, Indiana plant of the Chevrolet Motor Division, Muncie, Indiana (TA–W–7006); the Grand Rapids #1, Michigan Plant, Grand Rapids, Michigan (TA–W–7020); Lordstown, Ohio plant of the Fisher Body Division, (TA–W–7025); the General Offices of the Fisher Body Division, Warren, Michigan (TA–W–7034); the Bristol, Connecticut plant of the New Departure-Hyatt Division (TA–W–7054) the Ypsilanti, Michigan plant of the Hydra-matic Division (TA–W–7060); and the Massena, New York Plant of the Central Foundry Division (TA–W–7069) of the General Motor Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7318; General Safety Corp., St. Clair Shores, Mich.

The investigation was initiated on March 10, 1980 in response to a petition which was filed on behalf of workers at General Safety Corporation, St. Clair Shores. The workers at the St. Clair Shores plant produce seat belts and seat latches for automobiles.

The investigation revealed that criterion (3) has not been met.

Seat Belts

Customers of General Safety Corporation increased purchases of domestically produced seat belts in the first nine months of 1979 compared with the first nine months of 1978.

Seat Latches

U.S. imports of seat latches are negligible.

After careful review, I determine that all workers of General Safety Corporation, St. Clair Shores, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7306; Gloucester Ice & Cold Storage Co., Gloucester

The investigation was initiated on March 10, 1980 in response to a petition which was filed on behalf of workers at Gloucester Ice and Cold Storage Company, Gloucester, Massachusetts. The workers at Gloucester Ice and Cold Storage Company are engaged in providing the service of packing and freezing fresh fish.

The investigation revealed that workers of Gloucester Ice and Cold Storage Company do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Gloucester Ice and Cold Storage Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Gloucester Ice and Cold Storage Company and its customers have no controlling interest in one another. The subject firm shares common ownership with a company which produces ice. However, the subject firm is not affiliated with any company for whom it provides services.

All workers engaged in packing and freezing fresh fish at Gloucester Ice and Cold Storage Company are employed by that firm. All personnel actions and payroll transactions are controlled by Gloucester Ice and Cold Storage Company. All employee benefits are provided and maintained by Gloucester Ice and Cold Storage Company. Workers are not, at any time, under employment or supervision by customers of Gloucester Ice and Cold

Storage Company. Thus, Gloucester Ice and Cold Storage Company and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Gloucester Ice and Cold Storage Company, Gloucester, Massachusetts are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-1315; Industrial Timer Corp., Parsippany, N.J.

The investigation was initiated on March 10, 1980 in response to a petition which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers at Industrial Timer Corporation, Parsippany, New Jersey. The workers produced electrical relays and timers.

The investigation revealed that criterion (3) has not been met.

The Department conducted a survey of customers which purchased relays and timers produced by Industrial Timer Corporation. The survey indicated that most of these customers did not purchase imported relays or timers in 1979 or the first two months of 1980. The survey further revealed that of the customers who decreased purchases of relays and timers from domestic sources in 1979 compared to 1978, one purchased imported relays and timers. This customer represented an insignificant amount of the total purchases of relays and timers reported by the customers surveyed. None of the surveyed customers which decreased purchases of domestically produced relays and timers in the first two months of 1980 compared to the first two months of 1979 purchased imported relays or timers.

In this case, therefore, the certifying officer has determined that all workers of Industrial Timer Corporation, Parsippany, New Jersey are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-6846; International Silver Corp., Los Angeles, Calif.

The investigation was initiated on January 24, 1980 in response to a petition which was filed on behalf of workers employed at the Los Angeles, California warehouse of the International Silver Company. The workers are engaged in shipping, distribution and sales.

The investigation revealed that cirterion (3) has not been met.

The Department surveyed the customers of International Silver for their purchases of sterling silver flatware and holloware, silver plated flatware and holloware, stainless steel flatware and pewter holloware. Customers revealed that they did not decrease purchases of flatware and holloware products from International Silver and increase purchases of imports of these products during the period under investigation.

In this case, therefore, the certifying officer has determined that all workers of the Los Angeles, California warehouse and sales offices of International Silver Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7350; International Silver Corp. De Puerto Rico, San German, P.R.

The investigation was initiated on March 17, 1980 in response to a petition which was filed on behalf of workers at International Silver De Puerto Rico, San German, Puerto Rico. The workers produce sterling silver flatware.

The investigation revealed that criterion (3) has not been met.

Surveyed customers of International Silver Corporation did not increase their purchases of imported sterling silver flatware while decreasing purchases from International Silver in the first quarter of 1980 compared to the same period in 1979. These customers indicated that they did not anticipate increasing their reliance on imported sterling silver flatware in 1980.

In this case, therefore, the certifying officer has determined that all workers of International Silver Corporation De Puerto Rico, San German, Puerto Rico are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7339; Leonard Sunshine, Inc., New York, N.Y.

The investigation was initiated on March 10, 1980 in response to a petition which was filed by the International Ladies' Garment Workers' Union on behalf of workers at Leonard Sunshine, Incorporated, New York, New York. The workers formerly produced ladies' dresses, suits, skirts, slacks, blouses and blazers.

The investigation revealed that criterion (3) has not been met.

U.S. imports of women's, misses' and children's dresses; suits, slacks and shorts; blouses and shirts; and coats and jackets decreased absolutely from 1978 to 1979. The import-to-domestic production ratio for women's and misses' dresses, which accounted for the majority of Leonard Sunshine's sales, was 5.2 percent or lower in each year of the 1975–1978 time period.

The workforce at Leonard Sunshine was made up primarily of designers, sample makers, shippers and administrative personnel, who worked on both foreign and domestically-produced garments. All sewing operations were done by domestic and foreign contractors, to whom Leonard Sunshine sent garment designs and samples.

Leonard Sunshine has contracted work overseas since 1973 until it closed in June 1979. Company imports increased as a percent of total company sales from 1977 to 1978. The work done by foreign contractors represented the majority of the products sold by Leonard Sunshine in both 1977 and 1978.

Since the employees of Leonard Sunshine did not perform sewing functions and since they worked on both foreign and domestically made garments, the substantial and increasing proportion of garments assembled overseas did not adversely affect employment at Leonard Sunshine. Increases in the company's reliance on foreign sources could not have contributed importantly to declines in employment at Leonard Sunshine.

In this case, therefore, the certifying officer has determined that all workers of Leonard Sunshine, Incorporated, New York, New York are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7307; Leslie Fay, Inc.; Linco Knits Division; Lincolnton, N.C.

The investigation was initiated on March 10, 1980 in response to a petition which was filed on behalf of workers at the Linco Knits Division, Lincolnton, North Carolina, of Leslie Fay, Incorporated. The workers produce finished knit fabric.

The investigation revealed that criterion (3) has not been met.

U.S. imports of finished fabric decreased absolutely in 1979 compared with 1978. The ratio of imported fabric to domestic consumption of fabric has not exceeded 2.1 percent since 1975.

The Linco Knits Division sold fabric to dress manufacturing divisions of Leslie Fay, Incorporated and to customers outside the Leslie Fay corporation.

Sales of fabric to customers outside Leslie Fay, Incorporated increased in fiscal year 1979 compared with fiscal year 1978, and increased during the first five months of fiscal year 1980 compared with the same period in fiscal year 1979. By mid-November 1979, a corporate decision was in effect to curtail fabric sales to outside customers. Thereafter, sales of fabric to outside customers decreased.

Sales declines at the Linco Knits Division resulted primarily from decreased fabric sales to the dress

manufacturing divisions of Leslie Fay, Incorporated in fiscal year 1979 compared with fiscal year 1978, and during the period May to January fiscal year 1980 compared with the like period in fiscal year 1979. Leslie Fay, Incorporated did not purchase imported fabric during the period January 1977 through March 1980. Currently, there are no plans to purchase imported fabric.

In this case, therefore, the certifying officer has determine that all workers of the Linco Knits Division, Lincolnton, North Carolina, of Leslie Fay, Incorporated are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7217, 7217A, 7218 and 7219; Libbey-Owens-Ford Co., East Toledo, Ohio; Rossford, Ohio; Ottawa, Ill.; Lathrop, Calif.

The investigation was initiated on February 25, 1980 in response to a petition which was filed by the Stone, Glass and Clay Coordinating Committee on behalf of workers at the East Toledo, Ohio, Ottawa, Illinois and Lathrop, California plants of the Libbey-Owens-Ford Company. The investigation was expanded to include workers at the Rossford, Ohio plant. Workers at these plants produce laminated safety glass automobile windshields, tempered safety glass automobile side and back windows, and float glass.

The investigation revealed that criterion (3) has not been met.

The petition alleges that increased imports of automobiles have contributed importantly to the decline in sales or production and to the separation of workers at the plants. Imported automobiles can not be considered like or directly competitive with automotive glass products. Imports of automobile side windows, back windows, windshields, and float glass must be considered in determining the import injury to workers producing these articles at the Libbey-Owens-Ford Company plants.

U.S. imports of automobile windshields, windows and rear back lights, and plate and float glass declined both absolutely and relative to domestic production in 1979 compared to 1978.

A Department of Labor survey revealed no customers with decreased purchases from the Libbey-Owens-Ford Company and increased purchases of imported automobile side windows, back windows, and windshields in 1979 compared to 1978, or in the first 2 months of 1980 compared to the same period in 1979. The survey revealed no customers with decreased purchases from the subject firm and increased purchases of imported float glass in 1979 compared to 1978. The survey did reveal some customers with decreased purchases from the Libbey-Owens-Ford Company and increased purchases of imported float glass in the first 2 months of 1980 compared to the same period in 1979; however, these customers represented an insigificant portion of the subject firm's 1980 sales decline.

In this case, therefore, the certifying officer has determined that all workers at the East Toledo, Ohio, Rossford, Ohio, Ottawa, Illinois, and Lathrop, California plants of the Libbey-Owens-Ford Company are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7409; Marcy Sportswear, Inc., Newark, N.J.

The investigation was initiated on March 24, 1980 in response to a petition which was filed by the International Ladies' Garment Workers' Union on behalf of workers at Marcy Sportswear, Incorporated, Newark, New Jersey. The workers produce ladies' outerwear coats and jackets.

The investigation revealed that criterion (3) has not been met.

U.S. imports of women's, misses' and children's coats and jackets decreased absolutely in 1979 compared to 1978.

Marcy Sportswear, Incorporated is a contractor producing ladies' coats and jackets. The Department of Labor conducted a survey of the manufacturers from whom Marcy Sportswear received contract work. These manufacturers did not utilize foreign contractors nor did they import ladies' coats and jackets in 1978 or 1979. The survey revealed that the manufacturers received increased orders from their customers in 1979 compared to 1978, and that they filled these orders by increasing their use of in-house production facilities. The manufacturers' contracts with domestic sources other than Marcy remained constant from 1978 to 1979.

In this case, therefore, the certifying officer has determined that all workers of Marcy Sportswear, Incorporated, Newark, New Jersey are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7388; Masontown Manufacturing Co; Masontown, Pa.

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the International Ladies' Garment Workers' Union on behalf of workers at Masontown Manufacturing Company, Masontown, Pennsylvania. The workers produced ladies' blouses.

The investigation revealed that criterion (3) has not been met.

U.S. imports of women's, misses' and children's blouses and shirts decreased absolutely in 1979 compared to 1978.

A Departmental survey was conducted with manufacturers from whom Masontown received contract work in the 1977–1979 time period. Results indicated that the manufacturers did not employ foreign contractors nor did they import ladies' blouses in 1978 or 1979. The manufacturers increased their contracts with domestic contractors other than Masontown from 1978 to 1979. Total company sales by the manufacturers declined from 1978 to 1979 and a survey was conducted among the retail customers of the manufacturers. This survey revealed that retail customers who decreased purchases from the manufacturers and who increased their purchases of imported blouses, from 1978 to 1979, were a small portion of the manufacturers' business.

In this case, therefore, the certifying officer has determined that all workers of Masontown Manufacturing Company, Masontown, Pennsylvania are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7392; Meadowdale Coal Corp.; Meadowdale Strip Mine; Greenbrier County, W. Va.

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the United Mine Workers of America on behalf of workers at the Meadowdale Strip Mine, Meadowdale Coal Corporation, Greenbrier County, West Virginia. Workers mine metallurgical coal.

The investigation revealed that criterion (3) has not been met.

A domestic article may be "directly competitive with" an imported article at a later stage of processing (29 CFR 90.2). Coke is metallurgical coal at a later stage of processing. Imports of coke and imports of metallurgical coal may therefore be considered in determining import injury to workers mining coal which is processed into coke.

Imports into the United States of metallurgical coal and coke each respectively decreased both absolutely and relative to domestic production in 1979 as compared to 1978. Imports of coke decreased both absolutely and relative to domestic productions during the period January through February 1980 compared to the same period in 1979.

In this case, therefore, the certifying officer has determined that all workers of the Meadowdale Strip Mine,

Meadowdale Coal Corporation, Greenbrier County, West Virginia are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7321; Morris Levine & Sons, Inc., New York, N.Y.

The investigation was initiated on March 10, 1980 in response to a petition which was filed on behalf of workers at Morris Levine and Sons, Incorporated, New York, New York. The workers produced primarily women's leather coats.

The investigation revealed that criterion (3) has not been met.

A Departmental survey was conducted with customers for whom Morris Levine and Sons, Incorporated manufactured women's leather coats. The survey revealed that most of Morris Levine and Son's customers did not purchase imported women's leather coats during 1978 or 1979. Those customers who imported women's leather coats either decreased their purchases of imports from 1978 to 1979 or purchased the same level of imports in 1979 as in 1978.

In this case, therefore, the certifying officer has determined that all workers of Morris Levine and Sons, Incorporated, New York, New York are denied eligibilty to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7360; New Haven Foundry, New Haven, Mich.

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the United Auto Workers on behalf of workers at New Haven Foundry, New Haven, Michigan. Workers at the plant produce automobile component parts.

The investigation revealed that criterion (3) has not been met.

The petition alleges that increased imports of automobiles have caused reduced demand for automobile component parts.

Imported automobiles cannot be considered like or directly competitive with automobile component parts. Imports of automobile component parts must be considered in determining import injury to workers producing automobile component parts at the New Haven Foundry.

U.S. imports of passenger car and light truck brake drums decreased relative to domestic consumption in 1979 compared with 1978.

A Departmental survey revealed that customers of the New Haven Foundry do not purchase imported automobile component parts like or directly competitive with those purchased from the New Haven Foundry. Customers attributed the decline in purchases to the decline in the production of automobiles.

In this case, therefore, the certifying officer has determined that all workers of New Haven Foundry, New Haven, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7420; New Jersey Ladies' Coats, Newark, N.J.

The investigation was initiated on March 24, 1980 in response to a petition which was filed by the International Ladies' Garment Workers Union on behalf of workers at New Jersey Ladies' Coats, Newark, New Jersey. The workers at the plant produce ladies' jackets.

The investigation revealed that criterion (2) has not been met.

Total contract work by New Jersey Ladies' Coats increased in 1979 compared to 1978 and continued to increase during the first four months of 1980 compared to the same period of 1979.

In this case, therefore, the certifying officer has determined that all workers of the New Jersey Ladies' Coats, Newark, New Jersey are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7378; Pat Barrie, Ltd., New York, N.Y.

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the International Ladies' Garment Workers' Union on behalf of workers at Pat Barrie, Limited, New York, New York. The workers produce ladies' coats and suits.

The investigation revealed that criterion (3) has not been met.

The Office of Trade Adjustment Assistance conducted a survey of customers of Pat Barrie, Limited. None of the customers surveyed reduced purchases of ladies' coats and suits from Pat Barrie, Limited and increased purchases of imported ladies' coats and suits in 1979 compared to 1978 or in the first quarter of 1980 compared to the first quarter of 1979.

U.S. imports of women's, misses' and children's coats and jackets as well as imports of women's, misses' and children's suits decreased absolutely in 1979 compared to 1978.

In this case, therefore, the certifying officer has determined that all workers of Pat Barrie, Limited, New York, New York are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7326; Perception Direction Division of Bobbie Brooks, Inc., Hialeah, Fla.

The investigation was initiated on March 10, 1980 in reponse to a petition which was filed by the International Ladies' Garment Workers' Union on behalf of workers at Perception Direction Division of Bobbie Brooks, Incorporated, Hialeah, Florida. The workers produce ladies' sportswear (blouses, slacks, skirts and blazers).

The investigation revealed that criterion (3) has not been meet.

U.S. imports of the following categories of women's, misses', and children's apparel declined in 1979 compared to 1978: blouses and shirts, slacks and shorts, and coats and jackets.

The Department conducted a survey of customers of Perception Direction. The survey results revealed that most customers responding to the survey did not purchase imported ladies' sportswear (blouses, slacks, skirts or blazers) either directly from foreign sources or indirectly through domestic sources in 1978, 1979 or the first quarter of 1980. The customers who reduced purchases from Perception Direction and increased purchases of imports, in 1979 compared to 1978 or in the first quarter of 1980 compared to the first quarter of 1979, represented an insignificant portion of the surveyed customers, both in terms of the actual number of respondents and as a percentage of sales of Perception Direction. In general, the sample revealed that imports were a small proportion of customers' sportswear demand.

In this case, therefore, the certifying officer has determined that all workers of Perception Direction Division of Bobbie Brooks, Incorporated, Hialeah, Florida are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–6918; Press Products Co., Troy, Mich.

The investigation was initiated on February 5, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers at Press Products Company, Troy, Michigan. Workers at the plant produce door and hood hinges for cars and trucks.

The investigation revealed that criterion (3) has not been met.

Petitioners allege that imports of automobiles contributed importantly to separations of workers and declines in

sales or production of door and hood hinges at Press Products Company, Troy, Michigan. Imported automobiles cannot be considered to be like or directly competitive with door and hood hinges. Only imports of door and hood hinges may be used in determining the eligibility of workers producing door and hood hinges at the firm.

U.S. imports of hinges for hoods and doors and hinge assembly parts such as rods and clutch plates are negligible.

In this case, therefore, the certifying officer has determined that all workers of Press Products Company, Troy, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7152; Production Finishing Corp., Wyandotte, Mich.

The investigation was initiated on February 19, 1980, in response to a worker petition which was filed by the United Auto Workers on behalf of workers at Production Finishing Corporation, Wyandotte, Michigan. The workers at Production Finishing Corporation are engaged in providing the service of finishing sheet steel.

The investigation revealed that workers of Production Finishing Corporation do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Production Finishing Corporation by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Production Finishing Corporation and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company which produces an article.

All workers engaged in finishing sheet steel at Production Finishing Corporation are employed by that firm. All personnel actions and payroll transactions are controlled by Production Finishing Corporation. All employee benefits are provided and maintained by Production Finishing Corporation. Workers are not, at any time, under employment or supervision by customers of Production Finishing Corporation. Thus, Production Finishing Corporation, and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of Production Finishing Corporation, Wyandotte, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7557; RCA Corp., Solid State Division, Sommerville, N.J.

The investigation was initiated on April 7, 1980 in response to a petition which was filed on behalf of workers at RCA Corporation, Solid State Division, Sommerville, New Jersey. The Workers are engaged in employment related to the sales, research, development, and pilot production of solid state devices.

The investigation revealed that criterion (3) has not been met.

Workers at the Sommerville plant are employed in sales, research, development, and pilot production activities. The Sommerville plant does not engage in volume production, but engineers and designs new products for the Solid State Division of RCA. When these new products are successfully developed at Sommerville, full scale production is commenced at other RCA domestic plants.

Layoffs of workers during the first quarter of 1980 resulted from the transfer of model shop production along with research and development engineering personnel to the Solid State Division's domestic manufacturing plants. The transfer was an effort to minimize costs and to provide research and development at each manufacturing facility.

In this case, therefore, the certifying officer has determined that all workers of RCA Corporation, Solid State Division, Sommerville, New Jersey are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7346; Richard Sportswear Co., Inc., Allentown, Pa.

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers at Richard Sportswear Company, Incorporated, Allentown, Pennsylvania. Workers at the plant produce men's raincoats and outercoats.

The investigation revealed that criterion (3) has not been met.

U.S. imports of men's and boys' water repellant rainwear decreased absolutely in 1979 compared with 1978.

U.S. imports of men's and boys' outer jackets decreased absolutely in 1979 compared with 1978.

A Department survey of manufacturers for which Richard Sportswear did contract work revealed that none of the manufacturers used foreign contractors nor purchased imported men's raincoats and outercoats. A survey of these manufacturers' customers revealed that most of the responding firms' purchases of imported men's raincoats and outercoats decreased from 1978 to 1979.

In this case, therefore, the certifying officer has determined that all workers of Richard Sportswear Company, Incorporated, Allentown, Pennsylvania are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7368; Seaway Pattern Manufacturing, Inc., Toledo, Ohio

The investigation was initiated on March 17, 1980 in response to a petition which was filed by the Pattern, Mold and Model Makers Association on behalf of workers at Seaway Pattern Manufacturing, Inc., Toledo, Ohio. Workers at the Seaway Pattern Manufacturing plant produce patterns and molds.

The investigation revealed that criterion (3) has not been met.

It is alleged on the petition that increased imports of automobiles have caused a cutback in future programs and a subsequent lack of work for pattern makers. Imported automobiles cannot be considered like or directly competitive with patterns and molds. Imports of patterns and molds must be considered in determining import injury to workers producing patterns and molds at Seaway Pattern Manufacturing.

A Department survey of Seaway's major customers found that they purchased no imported patterns or molds in 1978, 1979 or 1980.

In this case, therefore, the certifying officer has determined that all workers of Seaway Pattern Manufacturing, Inc., Toledo, Ohio are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–6852; Standard Products Co., Cee Bee Division, Brooklyn, N.Y.

The investigation was initiated on January 25, 1980 in response to a petition which was filed on bahalf of workers at the Cee Bee Division, Brooklyn, New York of Standard Products Company. The workers produce interior and exterior platic automotive trim.

The investigation revealed that criterion (3) has not been met.

The Cee Bee Division primarily produces automotive interior soft trim.

With regard to interior trim, the ratio of imports of automotive interior soft trim to domestic production was less than two percent in 1978 and 1979.

Industry sources also indicate that imports of various piping and tubing automotive components are negligible.

A Labor Department survey concerning automotive interior soft trim revealed that the major customers that decreased purchases from the subject firm in 1979 compared to 1978 either decreased their reliance on foreign purchases from other domestic sources and maintained a negligible amount of foreign purchases in 1979 compared to 1978.

With regard to exterior trim, workers at the Cee Bee Division are not separately identifiable by product line. Any import influence in this product line could not have contributed importantly to overall employment declines at the plant because production accounted for a relatively small percentage of total production.

Petitioners allege that increased imports of automobiles have caused decreases in production and employment at the Cee Bee Division, Brooklyn, New York of Standard Products Company. Although imported automobiles incorporate automotive trim of the same origin, imports of the whole product are not "like or directly competitive" with their component parts. Imports of automotive trim must be considered in determining import injury to workers producing automotive trim at the Cee Bee Division, Brooklyn, New York of Standard Products Company.

In this case, therefore, the certifying officer has determined that all workers of the Cee Bee Division, Brooklyn, New York of Standard Products Company are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7578; The Majestic Silver Co., New Haven, Conn.

The investigation was intiated on April 14, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers at the Majestic Silver Company, New Haven, Connecticut. The workers at New Haven plant are engaged in employment related to the shipping of imported stainless steel flatware.

The Majestic Silver Company manufactured stainless steel flatware until December 1977, at which time the company discontinued all domestic manufacturing operations. Since December 1977, Majestic has been engaged only in the importation of stainless steel flatware. All workers of The Majestic Silver Company are engaged in employment related to the shipping of imported flatware.

Majestic has not produced an article as that term is used in Section 222 of the Trade Act of 1974 since December 1977 and consequently Majestic's employees have not been engaged in the production of an article for at least nine consecutive quarters.

In this case, therefore, the certifying officer has determined that all workers of the Majestic Silver Company, New Haven, Connecticut are denied eligibility to apply for adjustemnt assistance under Section 223 of the Trade Act of 1974.

TA-W-7433; United States Steel Corp., Desert Mound Mine, Cedar City, Utah

The investigation was initiated on March 31, 1980 in response to a petition which was filed by the United Steelworkers of America on behalf of workers at the Desert Mound Mine, Cedar City, Utah of the U.S. Steel Corporation. Workers at the Desert Mound Mine are engaged in employment related to the mining of iron ore.

The investigation revealed that criterion (3) has not been met.

All iron ore mined at the Desert Mound Mine is shipped to the Geneva Works of the U.S. Steel Corporation, where it is used in the production of steel. The Geneva Works does not import iron ore. The Geneva Works was the subject of a recent adjustment assistance investigation, in which it was determined that none of the products had been adversely impacted by imports.

In this case, therefore, the certifying officer has determined that all workers of Desert Mound Mine, Cedar City, Utah of the U.S. Steel Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7493; U.S. Truck Co., Inc., Flint, Mich.

The investigation was initiated on March 31, 1980 in response to a petition which was filed by the General Drivers and Helpers, Local 332 on behalf of workers at U.S. Truck Company, Inc., Flint Michigan. The workers at U.S. Truck Company, Inc. are engaged in transporting general commodities.

The investigation revealed that workers of U.S. Truck Company, Inc. do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to U.S. Truck Company, Inc. by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

U.S. Truck Company, Inc. and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any company producing a product.

All workers engaged in transporting general commodities at U.S. Truck Company, Inc. are employed by that firm. All personnel actions and payroll transactions are controlled by U.S. Truck Company, Inc. All employee benefits are provided and maintained by U.S. Truck Company, Inc. Workers are not, at any time, under employment or supervision by customers of U.S. Truck Company, Inc. Thus, U.S. Truck Company, Inc. and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of U.S. Truck Company, Inc., Flint, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA-W-7411; Utah International, Inc., Iron Springs Mine, Cedar City, Utah

The investigation was initiated on March 24, 1980 in response to a petition which was filed on behalf of workers at Utah International, Inc., Iron Springs Mine, Cedar City, Utah. Workers at the Iron Springs mine produce iron ore.

The investigation revealed that criterion (3) has not been met.

The petition alleges that increased imports of steel contributed importantly to the layoffs at Utah International's Iron Springs Mine. Imported steel cannot be considered like or directly competitive with iron ore. Imports of iron ore must be considered in determining import injury to workers producing iron ore at the Iron Springs Mine.

Virtually all of the iron ore mined at the Iron Springs Mine is sold to a single customer. This customer purchased no imported iron ore in 1978, 1979 or the first three months of 1980.

In this case, therefore, the certifying officer has determined that all workers of the Utah International, Inc., Iron Springs Mine, Cedar City, Utah are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7120; U.S. Truck Co., Inc., Detroit, Mich.

The investigation was initiated on February 13, 1980 in response to a petition which was filed on behalf of workers at U.S. Truck Company, Inc., Detroit, Michigan. The workers at U.S. Truck Company, Inc. are engaged in transporting general commodities.

The investigation revealed that workers of U.S. Truck Company, Inc. do not produce an article within the meaning of Section 222 (3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to U.S. Truck Company, Inc. by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

U.S. Truck Company, Inc. and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any company producing a product.

All workers engaged in transporting general commodities at U.S. Truck Company, Inc. are employed by that firm. All personnel actions and payroll transactions are controlled by U.S. Truck Company, Inc. All employee benefits are provided and maintained by U.S. Truck Company, Inc. Workers are not, at any time, under employment or supervision by customers of U.S. Truck Company, Inc. Thus, U.S. Truck Company, Inc. and not any of its customers, must be considered to be the "workers' firm".

In this case, therefore, the certifying officer has determined that all workers of U.S. Truck Company, Inc., Detroit, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

TA–W–7483; White Motor Corp., Autocar Trucks Division, Exton, Pa.

The investigation was initiated on March 31, 1980 in response to a petition which was filed by the UAW on behalf of workers at the Exton, Pennsylvania plant of Autocar Trucks, a division of White Motor Corporation. Workers at the Exton, Pennsylvania plant produced heavy-duty trucks (Class 8 trucks).

The investigation revealed that criterion (3) has not been met.

The ratio of U.S. imports of Class 8 trucks to domestic production of Class 8 trucks, in quantity, amounted to less than 4 percent in 1978 and 1979. Domestic production of Class 8 trucks increased in quantity each year from 1975 through 1979. U.S. exports of Class 8 trucks significantly exceeded U.S. imports each year during the 1975–1979 period.

The Exton, Pennsylvania plant of Autocar Trucks Division was closed as a result of a decision by White Motor Corporation to transfer production to another domestic truck assembly facility.

Petitioners in this case allege that the Autocar Trucks Division of White Motor Corporation is engaged in assembling trucks in Venezuela, South America. The investigation revealed that although Autocar Trucks does ship some parts for trucks to Venezuelan customers, the company does not assemble trucks in Venezuela, nor does it export trucks to the United States.

In this case, therefore, the certifying officer has determined that all workers of the Exton, Pennsylvania plant of Autocar Trucks, a division of White Motor Corporation, are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I hereby certify that determinations were issued with respect to all of the aforementioned cases during the week of May 12–16th, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80–15906 Filed 5–22–80; 8:45 am]

BILLING CODE 4510–28–M

Affirmative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of certifications of eligibility to apply for worker adjustment assistance issued during the period May 12–16, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

In the following cases it has been concluded that all of the criteria have been met.

TA–W–7139; Canron Corp., Star Iron & Steel Division, Tacoma, Wash.

The investigation was initiated on February 19, 1980 in response to a petition which was filed by the International Association of Bridge, Structural and Ornamental Ironworkers on behalf of workers at Canron Corp., Star Iron and Steel Division, Tacoma, Washington. The workers produce fabricated structural steel.

Imports of fabricated structural steel increased in 1979 compared to 1978.

The investigation revealed that the Star Iron and Steel Division was the lowest domestic bidder on several contracts that were awarded to foreign fabricators in 1978 and 1979.

In this case, therefore, the certifying officer has determined that:

"All workers of Canron Corp., Star Iron and Steel Division, Tacoma, Washington who became totally or partially separated from employment on or after February 1, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

TA–W–7516; Evette Leather Fashions, Inc., New York, N.Y.

The investigation was initiated on March 31, 1980 in response to a petition which was filed by the Amalgamated Clothing and Textile Workers Union, New York Joint Board on behalf of workers at Evette Leather Fashions, Incorporated, New York, New York. The workers produce leather wearing apparel.

U.S. imports of leather apparel, in absolute terms, were greater in 1979 compared to the average level of imports during the preceding four years. The ratio of imports to domestic production has exceeded 85 percent for the last four years.

A customer survey conducted by the Department revealed that a customer who represented most of Evette's production dramatically increased purchases of imports in 1979 compared to 1978 while decreasing purchases from Evette Leather Fashions over the same period.

In this case, therefore, the certifying officer has determined that:

"All workers of Evette Leather Fashions, Incorporated, New York, New York who became totally or partially separated from employment on or after August 31, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

TA–W–7001–7704, 7004A, 7007–7008, 7010–7014, 7018–7019, 7021–7024, 7026, 7027–7033, 7035–7041, 7044–7046, 7048–7050, 7052, 7053, 7055–7057, 7065–7068, 7070, 7305; General Motors Corp., Detroit, Mich.

Investigations were initiated on February 11, and March 10, 1980 in response to petitions which were filed by the United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) on behalf of workers at the component parts plants of

General Motors Corporation listed in the appendix.

In order to determine if increased imports contributed importantly to production and employment declines at General Motors Corporation component parts plants, the Department sought to determine the degree to which each of these facilities was integrated into the production of General Motors cars, trucks, vans, and general utility vehicles which have been subject to import injury. Where substantial integration was established the department considered imports of "like or directly competitive" cars, trucks, vans and general utility vehicles in determining import injury to workers producing component parts at the various plants.

The Department has determined that increased imports contributed importantly to the decline in sales or production and to total or partial separations of workers at 18 of General Motors Corporation's car and truck assembly plants (TA–W–6783, 6917, 6999–7000, 7009, 7015–16, 7059, 7071, 7073–76, 7078–82). Workers at these plants are engaged in production of one or more of the following car or truck lines: mid-size, standard and luxury/specialty cars, pick-up trucks, vans, and general utility vehicles.

During the course of the investigation, it was established that each of the component parts plants listed in the appendix produced a significant proportion of its output for use in one or more of the GM car and truck lines which have been subject to import injury.

In this case, therefore, the certifying officer has determined that:

"All workers of components parts plants of General Motors Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the appendix are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

I hereby certify that determinations were issued with respect to all of the aforementioned cases during the week of May 12–16, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

TA–W–	Plant and Location	Impact Date
	Chevrolet Motor Division	
7001	Bay City, MI	July 1, 1979.
7002	Buffalo, NY	Aug. 1, 1979.
7003	Livonia, MI	Aug. 1, 1979.
7004	Flint Manufacturing, Flint, MI	Aug. 1, 1979.
7004A	Adrian, MI	Aug. 1, 1979.
7005	Indianapolis, IN	June 1, 1979.
7007	Saginaw Plants, Saginaw, MI	July 1, 1979.
7008	Tonawanda, NY	June 1, 1979.
7010	Detroit Plants, Detroit, MI	July 1, 1979.
7011	Parma, OH	June 1, 1979.
7012	Flint Engine & Metal Fabricating, Flint, MI.	Aug. 1, 1979.
7013	Toledo, OH	July 1, 1979.
7014	Warren, MI	Jan. 1, 1980.
	Fisher Body Division	
7018	Fleetwood, Detroit, MI	July 1, 1979.
7019	Cleveland, OH	Mar. 1, 1979.
7021	Grand Rapids Trim Plant, Grand Rapids, MI.	May 1, 1979.
7022	Flint Number 1, Flint, MI	Dec. 1, 1979.
7023	Grand Blanc, MI	July 1, 1979.
7024	Tecumseh, MI	July 1, 1979.
7026	Columbus, OH	Mar. 1, 1979.
7027	Detroit-Fort Street, Detroit, MI	May 1, 1979.
7028	Trenton, NJ	July 1, 1979.
7029	Flint-Coldwater Road, Flint, MI	Jan. 28, 1979.
7030	Syracuse, NY	May 1, 1979.
7031	Elyria, OH	May 1, 1979.
7032	Lansing, MI	Oct. 1, 1979.
7033	Pontiac, MI	Sept. 1, 1979.
7035	Hamilton, OH	Oct. 1, 1979.
7036	Euclid, OH	Sept. 1, 1979.
7037	Pittsburgh Plant, McKeesport, PA	July 1, 1979.
7038	Detroit Central Plants, Detroit, MI	Mar. 1, 1979.
7039	Chicago, IL	Nov. 1, 1979.
7040	Livonia, MI	June 1, 1979.
7041	Marion, IN	Apr. 1, 1979.
7305	Kalamazoo, MI	July 1, 1979.
	AC Spark Plug Division	
7044	Flint, MI	July 1, 1979.
	Delco-Remy Division	
7045	Anderson, IN	July 1, 1979.
7046	Muncie, IN	Jan. 1, 1980.
	Guide Division	
7048	Anderson, IN	Aug. 1, 1979.
7049	Monroe, LA	Sept. 1, 1979.
	Harrison Radiator Division	
7050	Lockport, NY	June 1, 1979.
	Delco Moraine Division	
7052	Dayton, OH	July 1, 1979.
7053	Fredericksburg, VA	Dec. 1, 1979.
	New Departure-Hyatt Division	
7055	Sandusky, OH	Sept. 1, 1979.
7056	Clark, NJ	July 1, 1979.
	Saginaw Steering Gear Division	
7057	Saginaw, MI	Aug. 1, 1979.
	Central Foundry Division	
7065	Danville, IL	July 1, 1979.
7066	Saginaw, MI	June 1, 1979.
7067	Defiance, OH	Apr. 1, 1979.
7068	Bedford, IN	June 1, 1979.
	Delco Electronics Division	
7070	Shreveport, LA	Sept. 1, 1979.

[FR Doc. 80–15903 Filed 5–22–80; 8:45 am]

BILLING CODE 4510–28–M

[TA–W–7193 and 7194]

D & K Service, D & K Switching, Inc., Center Line, Mich.; Negative Determination Regarding Application for Reconsideration

By letter of April 10, 1980, a company official requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of D & K Service and D & K Switching, Inc., Center Line, Michigan. The determination was published in the **Federal Register** on April 4, 1980, (45 FR 23093).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The company, in its application for reconsideration, claims that the workers' firm is not D & K Service and D & K Switching, Inc., Center Line, Michigan, but one of its customers, namely, Chrysler Corporation which controls their movements and has control over their workers who work at the Chrysler Warren Truck Assembly plant.

The review of the investigative file indicated that employees of D & K Service and D & K Switching, Inc., do not produce an article within the meaning of Section 222(3) of the Trade Act of 1974. The review also showed that D & K Service and D & K Switching, Inc., and not any of its customers must be considered the "workers' firm."

The Department does not agree with the company's claim that workers of the subject firm are under the control of one of its customers by virtue of the fact that one of the customers controls the workers' movements or that the subject firms' workers spend their entire eight-hour shift at one of their customer's assembly plants. Since workers at D & K Service and D & K Switching, Inc., do not produce an article, they may be certified only if Chrysler Corporation, which provides virtually all of the business of the companies, is the "workers' firm" within the meaning of Section 222 of the Act. Chrysler may be determined to be the "workers' firm" if Chrysler and the D & K companies are related by ownership or by a substantial degree of proprietary control, of if the workers are *de facto* employees of Chrysler. Chrysler is not the "workers' firm" under either test. There is no element of ownership or control between the firms. The workers are not *de facto* employees of Chrysler since all payroll transactions, personnel actions and emloyee benefits are under the control of D & K. The mere fact that Chrysler might exercise some degree of supervisory control or might provide the destination of particular shipments of goods is not sufficient in itself to support

a determination that Chrysler is the "workers' firm."

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 9th day of May 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-15411 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6861]

Firestone Tire & Rubber Co., Memphis, Tenn.; Negative Determination Regarding Application for Reconsideration

By letter of April 17, 1980, the United Rubber Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Firestone Tire and Rubber Company's plant at Memphis, Tennessee. The determination was published in the **Federal Register** on March 28, 1980, (45 FR 20582).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The union claims that the Department placed excessive reliance on the customer survey without taking into consideration other factors such as (1) increased U.S. imports in 1979 of passenger car tires and truck tires, (2) Firestone's adjustments to market requirements, (3) the certification of other tire plants including the Firestone plant at Salinas, California, and that these certifications provide evidence of the adverse impact that imports have had on the domestic tire industry, and (4) the amount of imports controlled by domestic tire companies.

The Department's review indicates that the workers at Firestone's Memphis, Tennessee, plant did not meet the "contributed importantly" test of the Trade Act. The major share, by far, of the passenger car tires and truck tires produced at Memphis, Tennessee, were for the replacement market. The Department surveyed major customers and a random sample of smaller customers of Firestone who buy passenger car tires and truck tires in the replacement market. The survey revealed that most customers either did not import or decreased their imports of passenger car tires and truck tires in 1979 compared to 1978. The few customers who increased their reliance on imports of passenger car and truck tires accounted for an insignificant portion of Firestone's total sales.

The Department does not agree with the union's claim that the Department placed excessive reliance on the customer survey without considering other factors. It should be noted that in order for a worker group to become certified eligible by the Department, it must meet all three statutory criteria for group eligibility under Section 222 of the Trade Act including the "contributed importantly" test. Merely meeting the employment, production or sales, and increased import criteria without meeting the "contributed importantly" test are not enough for the Department to grant a worker group certification. Firestone's adjustments to market requirements, the Department's certification of other worker groups in the industry and the amount of imports controlled by domestic tire companies do not provide a basis for certification of the Memphis plant.

With respect to the Department's notice of determinations for workers at Firestone's Salinas, California, plant, a substantial share of that facility's passenger car tire production went to the original equipment market where it was found that a major customer increased its reliance on imported passenger car tires. Company imports of passenger car tires were increasing during the relevant time period covered by the investigation of the Salinas, California, plant; however, during the investigation of the Memphis, Tennessee, plant in February, 1980, the trend in company imports of passenger car tires over the past six months was decreasing, not increasing.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 9th day of May 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-15412 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6489, 6692]

The General Tire & Rubber Co., Logansport, Ind., Peru, Ind.; Negative Determination Regarding Application for Reconsideration

By an application dated April 25, 1980, the United Rubber Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing bushings, window channeling and beltstrip at the General Tire and Rubber Company's Logansport, Indiana, plant. The determination was published in the **Federal Register** on April 18, 1980, (45 FR 26496).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The union claims in its application for reconsideration that the worker group at the Logansport, Indiana, plant of the General Tire and Rubber Company should be considered separate from the worker group at the General Tire and Rubber Company's Peru, Indiana, plant. The union also claimed that no consideration was given to workers who produce window channeling and beltstrip at the Logansport, Indiana, plant.

The Department's review showed that workers at the Logansport, Indiana, plant did not meet the "contributed importantly" test of the Trade Act of 1974. Surveyed customers of the General Tire and Rubber Company, which represented the major portion of Logansport, Indiana, total sales, indicated that they either purchased no imports of bushings or decreased their purchases of imported bushings from

1978 to 1979. U.S. imports of bushings decreased both absolutely and relative to domestic consumption from 1977 to 1978 and from 1978 to 1979. The review of the investigative file showed that workers at the Logansport, Indiana, plant primarily produced silentbloc bushings whereas the workers at the Peru, Indiana, plant produced component parts for the silentbloc bushings.

The Department did consider the worker group at the Logansport, Indiana, plant separately from the Peru, Indiana, worker group in determining whether they each met the criteria of Section 222 of the Trade Act.

The Department does not agree with the union's claim that workers involved in some of the production (window channeling and beltstrip) were overlooked in the initial investigation. The Department determined that the decrease in the production of bushings at the Logansport, Indiana, plant constituted the major part of the production decline at the plant while the decrease in production of window channeling and beltstrip was not enough, by itself, to have been an important contributory cause to the decline in the production and sales or to the total or partial separations of workers at the plant within the meaning of the Act. Further, the Department's survey of the industry indicated that imports of window channeling were negligible.

Conclusion

After review of the application and investigative file, I conclude that there has been no error or misinterpretation of fact or mininterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 9th day of May 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-15413 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7095]

Leach-Heckel Leather Corp., Salem, Mass.; Negative Determination Regarding Application for Reconsideration

By application dated April 29, 1980, the petitioner, the Leather Workers International Union, requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing tanned leather at the Leach-Heckel Leather Corporation, Salem, Massachusetts. The determination was published in the **Federal Register** on April 25, 1980, (45 FR 28013).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner claims that the customer survey was inadequate and that leather shoes and garments caused workers producing tanned leather at Leach-Heckel Leather Corporation to be laid off.

The Department's review indicated that workers at Leach-Heckel did not meet the "contributed importantly" test of the Trade Act of 1974. The Department's survey of customers of the manufacturer which represented over 75 percent of Leach-Heckel sales in 1979 indicated that customers of that manufacturer who increased purchases of imports represented an insignificant proportion of that firm's sales.

The Department does not agree with the petitioner in its claim that imports of leather shoes and garments can be used in determining import injury for workers producing tanned leather, even though they may have had a secondary impact on supplies of component parts to domestic shoe and garment makers. The Department has already determined that imports of a finished article cannot be considered like or directly competitive with components of that article. Imports of such components must be considered by themselves in determining import injury to workers. The courts have concluded that imported finished articles are not like or directly competitive with domestic component parts thereof, *United Shoe Workers of America AFL–CIO* v. *Bedell*, 506 F. 2d 174 (1974). In that case, the court held that imported women's shoes were not like or directly competitive with shoe counters, a component of footwear.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 9th day of May 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-15414 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6494]

Motor Wheel Corp., Newark, Del.; Revised Determination on Reconsideration

On March 26, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Motor Wheel Corp., Newark, Delaware. This determination was published in the **Federal Register** on April 4, 1980, (45 FR 23099).

Counsel for the petitioner principally claims that imported mini-spares are like or directly competitive with the auto wheels produced by the Motor Wheel Corp., Newark, Delaware.

The Department's review indicated that workers of Motor Wheel at Newark, Delaware, were denied because they did not meet the "contributed importantly" test of the Trade Act of 1974. The denial was based on a customer survey.

The Department found in its reconsideration investigation that workers at Motor Wheel Corp., in Newark, Delaware, produced mini-spare wheels as well as the regular road wheel. The Department further found through a more complete customer survey that auto manufacturers which are customers of the Newark, Delaware, plant increased their imports of auto wheels.

Sales and production of auto wheels from the Newark, Delaware, plant declined in quantity and value in 1979 compared to 1978 and in the last quarter of 1979 compared to the same quarter in 1978.

Substantial layoffs at the Newark, Delaware, plant occurred in August, 1979 and continued in each month throughout the remainder of the year.

U.S. imports of motor wheels increased both absolutely and relative to domestic production in 1978 compared to 1977 and increased absolutely in the first nine months of 1979 compared to the same period in 1978.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of motor wheels contributed importantly to the total or partial separation of workers and former workers at Motor Wheel Corp., Newark, Delaware. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers at the Motor Wheel Corp., Newark, Delaware, who became totally or partially separated from employment on or after August 1, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 8th day of May 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-15415 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR SAFETY OVERSIGHT COMMITTEE

Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting:

Name: Nuclear Safety Oversight Committee.
Place: Millikan Board Room, Millikan Library, California Institute of Technology Campus, Pasadena, California.
Time: Wednesday, May 28, 1980 at 9:00 a.m.-4:00 p.m.

The purpose of the meeting is to enable the Committee to set its agenda for the next several meetings. Available seats will be assigned on a first-come basis. A portion of this meeting will be closed because it will involve discussion of personal qualifications of prospective staff members, public disclosure of which information would clearly constitute unwarranted invasion of privacy. The remainder of the meeting will be open to the public. The meeting is being convened with less than fifteen days notice because of the urgency in commencing the Committee's task.

The Committee was established by Executive Order 12202, on March 18, 1980, to advise on the progress of Federal and State authorities and the nuclear power industry in improving the safety of nuclear power and in implementing the approved recommendations of the President's Commission on the Accident at Three Mile Island.

Inquiries should be addressed to Mr. Andrew Federhar (602/255-4331).

Dennis G. Condie,

Acting Administrative Officer.

May 21, 1980.

[FR Doc. 80-16009 Filed 5-22-80; 8:45 am]

BILLING CODE 6820-01-M

OFFICE OF MANAGEMENT AND BUDGET

President's Commission for a National Agenda for the Eighties; Meeting

May 13, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given for a meeting of Panel 8 (Quality of American Life), of the President's Commission for a National Agenda for the Eighties, scheduled Friday, May 30, 1980, at 1:00 p.m. at Kahl Kadosh Beth Elohim Synagogue, 86 Hassell Street, Charleston, South Carolina.

The purpose of the meeting is for a public hearing on government funding and private sector support for the arts and the role of the arts in an agenda for the Eighties.

The meeting will be open to the public.

Available seats will be assigned on a first-come basis.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006, (202) 275-0616.

David R. Leuthold,

Budget and Management Officer.

[FR Doc. 80-15789 Filed 5-22-80; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Intergovernmental Science, Engineering, and Technology Advisory Panel; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Intergovermental Science, Engineering, and Technology Advisory Panel (ISETAP); Energy Task Force.
Date: Sunday, June 8, 1980, 12:30 p.m.-4:00 p.m.
Place: Exhibition Hall, Seattle Center, Seattle, Washington.
Type of Meeting: Open.
Contact Person: Mr. Peter Hickey, Staff Director ISETAP, Energy Task Force, U.S. Department of Energy, 202/252-9249.

Minutes of the meeting: Executive minutes of the meeting will be available from the office of Mr. Hickey.

Agenda

Recommendations, resolutions or other appropriate actions will be taken following a discussion of:

- OMB/OSTP Research and Development Budget Policy for DOE
- Local Government Energy Policy Advisory Committee of DOE
- Energy Extension Service, Technical Assistance, and other Model Programs
- Energy Legislative Issues
- Resource Recovery/Conference of Mayors Project

William J. Montgomery,

Executive Officer, Office of Science and Technology Policy.

[FR Doc. 80-15929 Filed 5-22-80; 8:45 am]

BILLING CODE 3170-01-M

THE PRESIDENT'S ADVISORY COMMITTEE FOR WOMEN

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the President's Advisory Committee for Women.

Date, time and place: June 19, 1980.
Open business session: 9:00 a.m. to 4:00 p.m., Room N-5437, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C.
Purpose: General Business Meeting.
Date, time and place: June 20, 1980.
Closed business session: 9:00 a.m. to 2:30 p.m., Room N-5437, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C.
Purpose: To discuss possible contractors and personnel issues.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. During its closed session, the Administration Subcommittee will discuss personnel and possible contractors.

Dated: May 15, 1980

Warlene Gary,

Deputy Director.

[FR Doc. 80-15897 Filed 5-22-80; 8:45 am]

BILLING CODE 4510-23-M

RADIATION POLICY COUNCIL

[FRL 1500-2]

Public Meeting

SUMMARY: Members of the Radiation Policy Council will be available to meet with the public beginning at 10:00 a.m. on Wednesday June 11, 1980. The meeting will be held in Room 3104 of the New Executive Office Building, 726 Jackson Place N.W. (located on 17th Street between Pennsylvania Avenue and H Street N.W.) Washigton, D.C.

PURPOSE OF MEETING: The Radiation Policy Council was created by Executive Order 12194 of February 21, 1980. (45 FR, pages 12209–10, February 25, 1980) The principle purpose of the Council is to coordinate the formulation and implementation of Federal radiation protection policies. The first meeting of the Council was held on May 14, 1980. At that meeting, the Council established a policy of seeking systematic involvement by the public in Council activities. The meeting scheduled for June 11, 1980 is a first step in carrying-out this policy.

The public is invited to suggest specific tasks to be undertaken by the Council and the priority to be attached to each task. The Council also seeks public comment on structuring its long-term agenda.

In addition, the Council invites the public to comment on four specific issues for which the Council at its first meeting established task forces to begin work immediately. They are:

—Federal Occupational Radiation Exposure Regulations.
—Control of Naturally Occurring Radioactivity—Radon.
—Federal Policy on Low-Level Radioactive Wastes from Medical and Research Institutions.
—Directory of Federal Radiation Activities and Responsibilities.

Any member of the public wishing to make a statement at the meeting should notify the Radiation Policy Council by June 6 at the address or phone number listed below. Late requests will be honored if possible. The Council invites the public to submit written statements to the Council before, during, or after the meeting. It will be most helpful if written statements are received by June 30. Additional background materials are available upon request by contacting the Radiation Policy Council at the address or phone number listed below. Depending upon the number of requests to appear at the meeting, the Council may have to place limits on oral presentations.

FOR FURTHER INFORMATION CONTACT: U.S. Radiation Policy Council, c/o OSTP/Executive Office of the President, Washington, D.C. 20500. Telephone: 202–395–4931.

Carl R. Gerber,

Director, U.S. Radiation Policy Council.

[FR Doc. 80-15910 Filed 5-22-80; 8:45 am]

BILLING CODE 6560-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 21581/70-6170]

Lowell Gas Co. and Cape Cod Gas Co.; Post-Effective Amendment Relating to Short-Term Financing

May 19, 1980.

In the matter of Lowell Gas Company, 95 East Merrimack Street, Lowell, Massachusetts 01853, Cape Cod Gas Company, P.O. Box 1360, Hyannis, Massachusetts 02601.

Notice is hereby given that Lowell Gas Company ("Lowell") and Cape Cod Gas Company ("Cape Cod"), public utility subsidiaries of Colonial Gas Energy System ("Colonial"), a registered holding company, have filed with this Commission a post-effective amendment to the joint declaration in this proceeding pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction. All interested persons are referred to the amended declaration for a complete statement of the proposed transaction.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31–763). Its application is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Lowell and Cape Cod each have revolving lines of credit pursuant to separate credit agreements (collectively, the "Credit Agreements") dated January 1, 1976, as amended, with Chase Manhattan Bank (N.A.), Union National Bank, Shawmut Bank of Boston, N.A., State Street Bank and Trust Company, and BayBank Middlesex, N.A. By order in this proceeding dated June 30, 1978 (HCAR No. 20185), Lowell and Cape Cod were authorized to extend the term of the Credit Agreements to June 30, 1980, and to borrow up to $11,800,000 for Lowell and $7,000,000 for Cape Cod.

The Credit Agreements were subsequently amended and now provide for borrowings up to the indicated amounts from the following banks:

Bank	Lowell	Cape Cod
The Chase Manhattan Bank (National Association).	$5,540,000	$2,112,000
Union National Bank	1,050,000	1,158,000
Shawmut Bank of Boston, N.A.	2,412,500	1,158,000
State Street Bank & Trust Co.	2,312,500	744,000
BayBank Middlesex, N.A	1,275,000	828,000
	12,500,000	6,000,000

Lowell and Cape Cod have outstanding loans of $7,250,000 and $6,000,000, respectively, evidenced by notes maturing June 30, 1980.

Lowell and Cape Cod are seeking authorization to extend their respective Credit Agreements for one year. The extended Credit Agreements will terminate June 30, 1981.

Lowell and Cape Cod's cost of borrowings under the Credit Agreements is: (a) ½ of a percent per annum of the unborrowed funds plus (b) ¾ percent above the Chase Manhattan Bank's prime rate from time to time. Lowell and Cape Cod, have informally agreed with the banks to either (1) maintain compensating balances of 10% of the banks' total commitment and additional compensating balances of 10% of the amount of any loans outstanding or (2) pay a fee equal to the prime rate plus ¾ of a percent times the amount by which the average bank balances are less that 10% of the banks' total commitment plus 10% of the amount of any loans outstanding. If the full amount were borrowed from the banks and the required compensating balances were not maintained, the effective interest cost would be 17.1%, based on a prime commercial rate of 14.5%.

It is stated that no state commission and no federal commission, other than this Commission has jurisdication over the proposed transaction. The fees and expenses incurred or to be incurred in connection with the proposed transaction will be filed by amendment.

Notice is further given that any interested person may, not later than June 12, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any

such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will received any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-15863 Filed 5-22-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 16807 SR-NASD-79-16]

National Association of Securities Dealers, Inc.; Filing of Amendments to Proposed Rule Changes and Order Approving Proposed Rule Changes

May 15, 1980.

In the matter of the National Association of Securities Dealers, Inc., 1735 K Street, Washington, D.C. 20006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on May 9, 1980, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission copies of amendments to proposed rule changes which the NASD previously had filed in response to certain recommendations of the Commission's Special Study of the Options Markets.[1] As amended, the NASD's proposals are substantially identical to rule proposals filed by the Chicago Board Options Exchange, American Stock Exchange, Midwest Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and New York Stock Exchange which were approved by the Commission in Securities Exchange Act Release No. 16696 (March 26, 1980).[2]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association and in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the subject rule proposals prior to the thirtieth day after the date of publication of the final amendments thereto since the rule proposals, as amended, are substantially identical to rule proposals filed by the exchanges noted above which were previously approved by the Commission. In addition, the Commission believes that accelerated approval of the subject proposals is necessary and appropriate in order to achieve a consistent and equal regulatory scheme for standardized options.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-15865 Filed 5-22-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 16813/SR-NASD-80-7]

National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

May 16, 1980.

In the matter of National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1980, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission copies of a proposed rule change. The following is the full text of the proposed amendments to Appendix E under Article III, Section 33 of the NASD's Rules of Fair practice. Deleted language is indicated by brackets.

Article III, Section 33, Appendix E[1]

Sec. 17
Opening of Accounts

(b) Diligence in Opening of Accounts.

[(3) Before approving an account of a trust, pension fund, profit sharing plan or other fiduciary for options trading, a member shall obtain written evidence that the instruments under which the fiduciary is acting permit options trading.

(4) Before approving an account with respect to which trading authorization has been granted to a third person who is not an employee of the member for options trading, the member shall obtain written evidence of the agent's authority to act and that such authority specifically includes options trading.

(5) Before approving an account of an investment partnership or an investment club for options trading, the member

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[1] Notice of the original filing was published in Securities Exchange Act Release No. 16460 (December 31, 1979), 45 FR 1954; the first amendment thereto was published in Securities Exchange Act Release No. 16660 (March 17, 1980), 45 FR 18537. All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

[2] Unlike these exchanges, the NASD has not yet filed with the Commission proposed rule changes in response to the Options Study's recommendations with respect to options sales communications and retention of jurisdiction over terminated members and their associated persons. By letter dated May 9, 1980, from Frank J. Wilson, Senior Vice President, NASD, to Douglas S. Scarff, Director, Division of Market Regulation, the NASD, however, has undertaken to submit for membership vote proposed rule changes in response to these recommendations and thereafter, if membership approval is obtained, to file these rule changes with the Commission.

[1] This filing reflects changes to the NASD's existing rules. Additional amendments to Appendix E are contained in a separate rule change proposal which is currently on file with the SEC (SR-NASD-79-16). Approval of that filing will result in a renumbering of certain rule provisions covered in this submission.

shall obtain written evidence of the authority of the person signing the agreement required by this Section to sign such agreement on behalf of such partnership or club, as the case may be, and that such authority specifically includes options trading. Information shall also be obtained with respect to any current long or short option positions of the respective partners or members of the partnership or investment club.]

Sec. 18

Discretionary Accounts

[(c) Prohibited Transactions—No transaction shall be executed in a discretionary account which would result in an uncovered short position in option contracts or in the uncovering of any existing short position in option contracts unless the person for whom the account is maintained has specifically authorized, in writing, transactions of this nature and such transactions are effected with due regard to the provisions of Section 19 of this Appendix E.]

* * * * *

Interested persons are invited to submit written data, views and arguments concerning the submission on or before June 13, 1980. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–NASD–80–7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association and in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Commission approved identical proposals by the Philadelphia Stock Exchange and the American Stock Exchange which were published for comment for the requisit period of time.[2] Accordingly, the Commission believes that accelerated approval of the NASD proposal is necessary and appropriate in order to achieve a consistent and equal regulatory scheme for standardized options.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, an it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–15864 Filed 5–22–80; 8:45 am]

BILLING CODE 8010–01–M

[2] See Securities Exchange Act Release Nos. 16697 and 16698 (March 26, 1980).

TENNESSEE VALLEY AUTHORITY

Transmission Line Location in the 100-Year Floodplain; Class Review and Request for Public Comment

AGENCY: Tennessee Valley Authority.

ACTION: Notice of class review evaluating potential impacts associated with locating transmission lines in the 100-year floodplain.

SUMMARY: Notice is hereby given that, in accordance with TVA's Floodplain Management and Protection of Wetlands procedures, 44 FR 45,513, 45,516 (1979), TVA has evaluated, as a class, the potential impacts on and alternatives to siting transmission lines in the 100-year floodplain. TVA has determined that normally there is no practicable alternative to siting transmission line support structures in the floodplain and any associated impact on beneficial floodplain values would be minimal.

FOR FURTHER INFORMATION CONTACT: Frank W. Smith, Director, Transmission Planning and Engineering, Tennessee Valley Authority, 701 Chattanooga Bank Building, Chattanooga, Tennessee 37402, or call TVA's Citizen Action Office toll free: 1–800–362–9250 (in Tennessee) or 1–800–251–9242 (in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Virginia, Missouri, and Arkansas).

SUPPLEMENTARY INFORMATION: TVA's Floodplain Management and Protection of Wetlands procedures, 44 FR 45,513–24 (1979), implementing Executive Order Nos. 11988 and 11990, require TVA to evaluate potential impacts on and alternatives to siting new structures in the 100-year floodplain or constructing new facilities in wetlands. Paragraph 12 of those procedures permits TVA to evaluate, as a class, routine or recurring actions when the considerations of whether to locate in a floodplain or wetland are substantially similar.

TVA has conducted such a class evaluation of transmission line locations in the 100-year floodplain. In order to maintain an adequate transmission system and to connect new loads or generating facilities into the TVA power system, new lines of varying voltages and lengths are constructed on a relatively frequent basis. In addition, TVA occasionally relocates transmission lines to accommodate other uses in an area.

Due to the presence of two major river basins and numerous other streams in TVA's power supply area, there is normally no practicable alternative to constructing or relocating transmission lines in the 100-year floodplain. TVA ensures that, in the construction or relocation of lines, floodplains are not irreparably damaged by construction activities, altered significantly in volume and rate of flow, or significantly reduced in flood storage capacity. Transmission line support structures are relatively small and for each foot of flood elevation, less than one cubic foot of flood capacity per structure would be displaced. TVA has therefore determined that all practicable measures to minimize harm to the floodplain will be taken and the potential impact on natural and beneficial floodplain values would be minimal.

Copies of TVA's detailed evaluation may be obtained by contacting Frank Smith, identified earlier in this notice, or by calling TVA's toll free Citizen Action lines. Any comments on TVA's determination must be submitted on or before June 23, 1980.

Dated: May 14, 1980.

Mohamed T. El-Ashry,

Director of Environmental Quality, Tennessee Valley Authority.

[FR Doc. 80–15798 Filed 5–22–80; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 80–137]

Imported Lightweight Cab Chassis; Change of Practice Regarding Tariff Classification

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Change of practice.

SUMMARY: This document announces that Customs has found the current uniform and established practice of classifying imported lightweight cab chassis under the provision for bodies (including cabs) and chassis under the provision for bodies (including cabs) and chassis, in item 692.20, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4 percent ad valorem, to be clearly wrong. That practice is being changed because it conflicts with principles announced in the decision of the U.S. Court of Customs and Patent Appeals in *Daisy-Heddon, Div. Victor Comptometer Corp.* v. *United States*, C.A.D. 1228 (1979).

Effective 90 days after publication of this notice in the **Federal Register**, it will be Customs practice to classify imported lightweight cab chassis under the provision for automobile trucks valued at $1,000 or more in item 692.02, TSUS, dutiable at the rate of 25 percent ad valorem under item 945.69 TSUS.

EFFECTIVE DATE: August 21, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** on September 2, 1975 (40 FR 40190), and modified on October 10, 1975 (40 FR 47806), Customs announced that it was reviewing its practice concerning the tariff classification of cab chassis (consisting of frames, suspension systems, wheels, engines, steering mechanisms and cabs) without bodies, having very limited cargo carrying capacity in their condition as imported. This action was taken after the contention was advanced that cab chassis should be classified under the provision for automobile trucks valued at $1,000 or more, in item 692.02, TSUS, (19 U.S.C. 1202), dutiable at the rate of 25 percent ad valorem under item 945.69, TSUS, rather than under the provision for chassis, bodies (including cabs) and parts, in item 692.20, TSUS.

After a review of the comments submitted in response to the notice, Customs concluded that the existing practice of classifying cab chassis was correct and should not be changed.

Following Customs decision in this matter, the General Accounting Office (G.A.O.), at the request of the Committee on Ways and Means, U.S. House of Representatives, examined Customs classification practice regarding imported cab chassis. The report subsequently issued by the G.A.O. noted that while it was difficult to conclude that the current classification practice was clearly wrong, the G.A.O. was of the opinion that the practice was questionable (Report by the Comptroller General of the United States, GGD 79–19, December 13, 1978). After reviewing the G.A.O. report, in January, 1979 the Treasury Department reaffirmed the correctness of the existing practice of classifying imported cab chassis as parts. The International Trade Commission (I.T.C.) subsequently released a report commenting on the G.A.O. study (Assessment of the December 13, 1978, Report of the Comptroller General of the United States, May 18, 1979). The I.T.C. report concluded that the present cab chassis classification practice was "clearly wrong".

The Customs practice of classifying cab chassis as chassis was based in large part on the determination that an "essential" part of a truck was missing, following the opinion of the U.S. Court of Customs and Patent Appeals in *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109 (1973). However, in June of 1979, that Court issued a decision which expressly overruled the majority rationale in *Authentic Furniture, (Daisy-Heddon, Div. Victor Comptometer* v. *United States*, C.A.D. 1228 (1979)).

In *Daisy-Heddon*, the Court stated:

> * * * The result in *Authentic Furniture Products* does not merely depend on the "essential" nature, be it functional or commercial, of the omitted side rails. It is abundantly clear from the opinion of the Customs Court, which was approved by this court, that the basis of the decision in that case was that "it is the determination of this court that the importations do not constitute a substantially complete article." 68 Cust. Ct. at 215, 343 F. Supp. at 1380. Such a determination does not depend merely on the presence or absence of an "essential" part.
>
> There are several factors which may come into play in the determination of whether an article is substantially complete. In a case, such as this, where the article is incomplete due to the omission of one or more parts, as opposed to where an article is incomplete because the material which comprises the article is in need of further processing, the following factors can be relevant: (1) Comparison of the number of omitted parts with the number of included parts; (2) comparison of the time and effort required to complete the article with the time and effort required to place it in its imported condition; (3) comparison of the cost of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and, (5) trade customs, i.e., does the trade recognize the importation of as unfinished article or as merely a part of that article. This list of factors is not exhaustive; it must be recognized that fewer than all of the above factors, or additional factors, may come into play depending on the particular importation. The outcome of each case will always depend on the particular merchandise involved. It would be over-simplification of an essentially difficult juridicial problem, often involving a determination of congressional intent, for us to attempt to provide anything more than guidelines for the trier of fact to follow in assessing a given case. * * *

On October 17, 1979, a general notice was published in the **Federal Register** (44 FR 59984) advising that, in view of the decision in *Daisy-Heddon*, Customs was reconsidering its practice of classifying imported cab chassis under the provision for bodies (including cabs) and chassis in item 692.20, TSUS.

As part of this review, Customs requested comments concerning the application of Daisy-Heddon to the tariff classification of cab chassis. The comments were to be directed primarily to the following issues:

(1) Are the five factors cited by the Court in *Daisy-Heddon* applicable to the tariff classification of cab chassis or should other factors or expressions of legislative intent govern?

(2) If the five factors are applicable, what manner should they be applied? (Factual information regarding the number and relative value of parts involved may be relevant to this question.)

(3) Does the opinion of the Court in *Daisy-Heddon* require a finding that cab chassis should be classified under the superior heading "Motor vehicles (except motorcycles) for the transport of persons or articles"?

(4) If so, should they be classified under the inferior heading "Automobile trucks valued at $1,000 or more, and motor buses: Automobile trucks" (692.02, TSUS) or as "Other" (692.10, TSUS):

Comments were to have been received on or before December 17, 1979. However, in response to a request for an extension, the time for submission of comments was extended to January 31, 1980, by notice published in the **Federal Register** on December 14, 1979 (44 FR 72699).

Comments

In response to the notice, comments were received from 34 domestic and foreign manufacturers, foreign governments, trade associations, labor unions, law firms, and members of the public and Congress. In general, domestic producers and the United Auto Workers Union argued for reclassification of cab chassis as unfinished trucks, whereas importers argued that the present classification was correct.

Change of Practice

After careful consideration of all comments received Customs has concluded that the present practice of classifying cab chassis as "chassis" under item 692.00, TSUS, is clearly wrong with respect to lightweight cab chassis. These imports will be reclassified as unfinished automobile trucks, pursuant to General Interpretative Rule 10(h) of the TSUS and the Court of Customs and Patent Appeals decision in *Daisy-Heddon, supra*. The reasons for this decision are set forth below.

Cab chassis or "chassis cabs" have been defined as "an incomplete vehicle, with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing or load-bearing components to perform its intended functions". 40 FR 45847 (Oct. 3, 1975). Chassis, in contrast, are "the basic operating motor vehicle including engine, frame, and other essential structural and mechanical parts but exclusive of body and all appurtenances for the accommodation of driver, property, or passengers, appliances, or equipment related to other than control". Society of Automotive Engineers, Nomenclature Standard SAE J687c. However, "If a cab or cowl is included, the designation shall be motor vehicle chassis with cab or cowl". *Id.*

Imported cab chassis vary from lightweight cab chassis that can be driven "as is" as a passenger vehicle, or converted in a few minutes for a small percentage of total manufacturing cost into a pickup truck, to heavy-duty "cab over engine" cab chassis that may require the installation of thousands of dollars of additional equipment before they can be used.

We believe it appropriate to apply the five decisional factors set forth by the Court of Customs and Patent Appeals in the *Daisy-Heddon* opinion to determine the classification of cab chassis imports.

The Court in *Daisy-Heddon* was of the view that in cases where the article is incomplete due to the omission of one or more parts, as opposed to where an article is incomplete because the material which comprises the article is in need of further processing, the five decisional factors listed above are relevant. As is discussed below, we have found no reason to deviate from that approach in this case.

In past decisions maintaining the present practice, some weight has been given to two indications of Congressional intent to classify cab chassis as parts. These are (1) Headnote 1(b) of Schedule 6, Subpart B of the TSUS, which provides that truck tractors, which are similar to cab chassis but with a fifth wheel added for coupling, are to be classified as parts when imported separately from truck trailers, and (2) the absence from the TSUS of the explanatory note to Chapter 87 of the Brussels Tariff Nomenclature, which provides for the classification of cab chassis as motor vehicles. We do not believe these to be sufficiently strong evidence of Congressional intent to outweigh the other factors present. Moreover, these factors appear to be more relevant to the classification of medium and heavyweight (as opposed to lightweight) cab chassis.

Some commentors argue that the *Daisy-Heddon* opinion, which decided whether imports were classifiable as parts of a particular article, or as that article itself, is not relevant to the classification of cab chassis as "chassis" or "trucks" because these are *eo nomine* tariff provisions.

We disagree with this assertion. The cab chassis at issue here are not clearly within the *eo nomine* provision. Under that circumstance, we deem the factors announced in *Daisy-Heddon* to be a reasonable way of distinguishing between an unfinished truck and and any lesser assemblage of parts.

Many of the commentors argue that trade policy considerations should govern the classification decision herein. In our view, Customs classification decisions must be limited to interpretation of Congressional intent as expressed in the Tariff Schedule and legislative history, and judicial and administrative decisions interpreting the Schedules. In other words, trade policy considerations cannot decide the legal, interpretative question: what is the proper tariff classification for a particular class of imported merchandise? This is not to say that we are unmindful of the economic consequences of classification decisions. However, it is the responsibility of other agencies of government—specifically the Congress, and the United States Trade Representative—to address the results of classification decisions that are believed to be undesirable from the standpoint of trade policy.

Customs believes that the application of the *Daisy-Heddon* guidelines quoted above to the classification of lightweight cab chassis imports requires a finding that the present practice of classifying these imports as "chassis" or parts is clearly wrong, and that they should be reclassified under item 692.02, TSUS, as automobile trucks valued at $1,000 or more.

In comparing the number of parts omitted with those included, it was shown that there are approximately 4,500 parts in a cab chassis, but only 120 in a cargo box. It was demonstrated that the cargo box can be assembled with minimal effort, and that its value in the case of one of the shortbed pickups was estimated to be $375 as compared with $5,100 total selling price (7 percent). While cargo boxes are significant to the functioning of the completed vehicle, most lightweight cab chassis can be used to move passengers and, to some extent, cargo without being completed. Furthermore, it was demonstrated that, according to trade custom, cab chassis are recognized as unfinished trucks. Therefore, in the future, Customs will classify lightweight imported cab chassis under the provision for automobile trucks valued at $1,000 or more in item 692.02, TSUS, presently dutiable at the rate of 25 percent ad valorem under item 945.69, TSUS.

With respect to other than lightweight cab chassis, the comments received lead us to conclude that the application of the *Daisy-Heddon* factors to mediumweight and heavyweight vehicles does not require a conclusion that Customs present practice is clearly wrong. The comments indicate that the number of parts added to the chasssis varies depending on the changes made to the chassis after importation. Changes usually are beyond the control of the importer, who is unconcerned with alterations made to the imported cab chassis by the customer.

Following importation, chassis frequently are made into garbage trucks, beer trucks, etc., by parties other than the importer. They also indicate that the time and effort required to perform these changes can be significant and may take several days, or up to 40 or 50 man-hours. Regarding costs of parts, the customer's body work can equal more than 50 percent of the total vehicle cost. The missing parts are significant because as imported, cab chassis have no functional use other than for resale to manufacturers. Finally, it was shown that trade custom treats these imported vehicles as chassis. In view of the above evidence, Customs is prepared to review petitions, should any be received regarding the classification of mediumweight and heavyweight cab chassis on a case-by-case basis to determine whether a change in classification is warranted.

The change in practice regarding lightweight cab chassis shall be effective as to merchandise entered for consumption or withdrawn from

warehouse for consumption on or after August 21, 1980.

R. E. Chasen,

Commissioner of Customs.

Approved: May 19, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-15878 Filed 5-22-80; 8:45 am]

BILLING CODE 4810-22-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on June 9 and 10, 1980, in room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, N.W., Washington, D.C. The meeting will begin at 10:00 a.m. on June 9 and 9:00 a.m. on June 10. The agenda will include the following topics:

Monday, June 9: Administration of Preparer Penalties; Tax Forms Simplification Study; Taxpayer Ombudsman Program; and Update.

Tuesday, June 10: 2032A, Valuation of Certain Forms, etc., Real Property and Functioning of the Advisory Group.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. After the Committee members finish discussing the items on the agenda, there may be time for statements from nonmembers. If you want to make a statement at the meeting, or if you would like the Committee to consider a written statement, please call or write to D. James Lantonio, Assistant to the Deputy Commissioner, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 F.R. 52120).

FOR FURTHER INFORMATION CONTACT:

D. James Lantonio, Assistant to the Deputy Commissioner, 202-566-4143 (not toll free).

William E. Williams,

Acting Commissioner.

[FR Doc. 80-15914 Filed 5-22-80; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Administrator's Education and Rehabilitation Advisory Committee; Availability of Annual Report

Pursuant to the provisions of Section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) and OMB Circular A-63 of March 27, 1974, notice is hereby given that the Annual report of the Veterans Administration Administrator's Education and Rehabilitation Advisory Committee for calendar year 1979 has been issued.

The report summarizes activities of the Committee on matters related to the administration of the education and training programs for veterans and servicemen, dependents of veterans, and for service-connected disabled veterans. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Division, Room 1026, Thomas Jefferson Building, Washington, D.C. 20540; and

Veterans Administration, Executive Secretary, Administrator's Education and Rehabilitation Advisory Committee, Room 444-B, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: May 19, 1980.

Max Cleland,

Administrator.

[FR Doc. 80-15840 Filed 5-22-80; 8:45 am]

BILLING CODE 8320-01-M

Central Office Education and Training Review Panel; Availability of Annual Report

Pursuant to the provisions of Section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) and OMB Circular A-63 of March 27, 1974, notice is hereby given that the Annual Report of the Veterans Administration Central Office Education and Training Review Panel for calendar year 1979 has been issued.

The report summarizes activities of the Panel on matters related to reviews of decisions of Committees on Education Allowances. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Division, Room 1026, Thomas Jefferson Building, Washington, D.C. 20540; and

Veterans Administration, Chief, Field Operations Staff, Room 436, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: May 19, 1980.

Max Cleland,

Administrator.

[FR Doc. 80-15841 Filed 5-22-80; 8:45 am]

BILLING CODE 8320-01-M

Facility Upgrading; Entrance Drive and Development for Burial Culpeper National Cemetery, Culpeper, Va.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the development for burial of approximately 4 acres at Culpeper National Cemetery, Culpeper, Virginia, along with railroad grade crossing improvement, replacement of a water line and modernization of two public restrooms.

Development of the project would have impacts on the natural and human environments as it affects surface runoff, erosion, landscaping and local traffic. Additionally, construction noise, fumes, dust and visual impacts will exist during construction. The completed project will be impacted by noise from the nearly rail line.

Mitigating actions include: Avoidance of the floodplain, landscaping, control of erosion, dust and fumes, implementation of noise control measures, planning of cemetery operating procedure, and coordination with Culpeper Village officials.

The Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (004A), Room 1027A, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: May 16, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 80-15842 Filed 5-22-80; 8:45 am]

BILLING CODE 8320-01-M

Modernization Replacement, Veterans Administration Medical Center, Minneapolis, Minn.; Finding of No Significant Impact

The Veterans Administration (VA), in order to adequately fulfull its mission, is proposing to modernize and/or replace the existing VA Medical Center (VAMC) Minneapolis, Minnesota.

The site consists of 111 acres located on the southern edge of Minneapolis just north of the Minneapolis-St. Paul International Airport. The site is bounded by 54th Street on the north, Crosstown Highway (County Road 62)

on the south, 46th Avenue on the west, and the Mississippi River Valley on the east. The existing formal entrance to the VAMC is on the north from 54th Street, but most traffic enters off of Minnehaha Avenue. The existing main campus plan west of Minnehaha Avenue includes 25 buildings which are connected by single level corridors. East of Minnehaha are another 14 structures. The older section of hospital was activated in 1927 which was augmented in 1953 by the construction of an 8-story general medical building (Building 43).

Alternatives considered in this report for implementation are as follows: No Action, the VAMC cannot adequately meet current or projected increased workload and space requirements; a combination of new construction and modernization of existing facilities to meet future requirements; and a total replacement VAMC to meet future requirements.

The Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (004A), Room 1027A, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Asssessment may be addressed to the above office.

Dated: May 15, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 80-15843 Filed 5-22-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 102
Friday, May 23, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, May 28, 1980.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Leverage Transactions
The Commission will consider recommendations by the Office of General Counsel regarding the regulation of gold and silver leverage transactions as contracts for future delivery
New York Futures Exchange, Inc. Contract Designations
The Commission will consider the application of the New York Futures Exchange, Inc. for designation as contract market in British Pounds, Canadian Dollars, Deutsche Marks, Japanese Yen and Swiss Francs.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1023-80 Filed 5-21-80; 11:23 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:30 a.m., Wednesday, May 28, 1980.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matter/Proposed administrative proceeding.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1024-80 Filed 5-21-80; 11:23 am]

BILLING CODE 6351-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, May 27, 1980.

PLACE: Commission Conference Room, No. 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Freedom of Information Act Appeal No. 80-2-FOIA-122, concerning a request for the names of certain specific respondents.
2. Proposed contracts for services needed in connection with court cases.
3. Proposed extension of comment period on the Pilot Program for Federal Sector Complaints.
4. Proposed Interim Regulations for Accepting and Processing Mixed-Case Petitions.
5. Proposed EEOC Compliance Manual § 110, Equal Pay Act Intake and Respondent Notification Procedures.
6. State and Local Program—Staff Policy Recommendations for EEOC's Program for State and Local Fair Employment Practice Agencies.
7. Report on Commission Operations by the Executive Director Closed to the public:

Litigation Authorization: General Counsel Recommendaitons.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued May 20, 1980.

[S-1022-80 Filed 5-21-80; 11:07 am]

BILLING CODE 6570-06-M

4

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 45, FR p. 32830, May 19, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., May 22, 1980.

PLACE: 1700 G Street NW., amphitheater second floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the agenda for the open meeting:

Holding Company Acquisition and Merger by—MCA, Inc. City, California *to acquire* The Mutual Savings and Loan Association, Grand Junction, Colorado *and subsequent merger of said association into* Columbia Savings and Loan Association, Englewood, Colorado.
Application for Merger—Evanston Federal Savings and Loan Association, Evanston, Illinois, into First Federal Savings and Loan Association of Chicago, Chicago, Illinois.

Announcement is being made at the earliest practicable time.

No. 351, May 21, 1980.

[S-1028-80 Filed 5-21-80; 3:36 pm]

BILLING CODE 6720-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

May 19, 1980.

TIME AND DATE: 10 a.m., May 28, 1980.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following case: 1. Maben Energy Corporation, Docket No. WEVA 79-123-R. Issues include whether Maben Energy Corp. was responsible for a violation of 30 CFR § 77.216-3(a).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-1021-80 Filed 5-21-80; 10:25 am]

BILLING CODE 6820-12-M

6

FEDERAL RESERVE SYSTEM.

Board of Governors.

TIME AND DATE: 10:00 a.m., Wednesday, May 28, 1980.

PLACE: 20th Street and Constitutional Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: Summary Agenda:

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the

Board requests that the item be moved to the discussion agenda.

1. Proposed restatement of the System policy on equal Employment Opportunity and the use of affirmative action programs.

Discussion Agenda:

1. Proposed statement to be presented to the Senate Committe on Banking, Housing, and Urban Affairs regarding margin requirements for commodities futures.*

2. Proposed statement to be presented to the Subcommittee on Domestic Monetary Policy of the House Committee on Banking, Finance and Urban Affairs regarding "Meeting the Credit Needs of Inner-City Minority Communities".

3. Requests for modification to the Consumer Credit Restraint Program.

4. Any agenda items carried forward from a previously announced meeting.

Note.—Anyone planning to attend specifically for Discussion Agenda Item 1 should contact the office below on Tuesday, May 27, 1980 to assure that it has not been postponed due to a change in the date of the testimony.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 4522-3204.

Dated: May 21, 1980.

Griffith E. Garwood,

Deputy Secretary of the Board.

[S-1025-80 Filed 5-12-80; 12:06 pm]

BILLING CODE 6210-01-M

7

[USITC SE-80-31]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, June 3, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Rifle scopes (Docket No. 652).
   b. Slide fasteners (Docket No. 653).
5. Butter cookies from Denmark (Inv. 701-TA-51)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1027-80 Filed 5-21-80; 3:09 pm]

BILLING CODE 7020-02-M

8

[NM-80-21]

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUCEMENT: 45 FR 32475, May 16, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:00 a.m., Friday, May 23, 1980.

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Special Study.*—Commuter Airline Safety Study.
2. *Fiscal year 1980 Safety Objective.*—Increased Surveillance of Part 135 Operators.
3. *Discussion* of Board policy on safety-related budget cuts of other agencies.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202-472-6022.

May 21, 1980.

[S-1026-80 Filed 5-21-80; 2:11 pm]

BILLING CODE 4910-58-M

federal register

Friday
May 23, 1980

Part II

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Georgia:	
GA79–1148	Nov. 16, 1979
GA79–1149	Nov. 23, 1979
New Jersey:	
NJ79–3029	Jan. 4, 1980
NJ80–3024	May 2, 1980
New Mexico—NM79–4103	Nov. 2, 1979
Oregon—OR80–5106	Feb. 9, 1980
Pennsylvania:	
PA78–3054	Aug. 11, 1978
PA79–3005	Mar. 16, 1979
PA79–3009	May 4, 1979
Virginia—VA78–3075	Nov. 3, 1978
Washington—WA80–5107	Mar. 7, 1980

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California—CA78–5123 (CA80–5117)	Aug. 18, 1978
Indiana:	
IN79–2002 (IN80–2016)	Jan. 26, 1979
IN79–2003 (IN80–2021)	Jan. 26, 1979
Louisiana—LA79–4070 (LA80–4039)	Aug. 17, 1979
Minnesota:	
MN79–2022 (MN80–2031)	May 4, 1979
MN79–2023 (MN80–2032)	May 4, 1979
Pennsylvania—PA78–3070 (PA80–3038)	Sept. 29, 1978
Wisconsin:	
WI78–2121 (WI80–2037)	Oct. 20, 1978
WI78–2116 (WI80–2039)	Oct. 20, 1978

Cancellation of General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor intends to withdraw 14 days from the date of this notice the following general wage determinations:

IN77-2070—Grant County, Indiana dated May 13, 1977 in 42 FR 24555—Residential Construction.
IN77-2025—Miami County, Indiana dated February 18, 1977 in 42 FR 10198—Residential Construction.
IN77-2093—Bartholomew County, Indiana dated May 27, 1977 in 42 FR 27551—Residential Construction.
IN77-2012—Jackson County, Indiana dated February 11, 1977 in 42 FR 8913—Residential Construction.
IN77-2014—Johnson County, Indiana dated February 11, 1977 in 42 FR 8914—Residential Construction.
IN77-2096—Lawrence County, Indiana dated May 27, 1977 in 42 FR 27552—Residential Construction.
TX79-4014—Dimmit, Jim Hogg, LaSalle, Maverick, Webb, Zapata and Zavala Counties, Texas dated January 5, 1979 in 44 FR 1686—Building and Residential Construction.
TX80-4007—Tom Green County, Texas dated January 18, 1980 in 45 FR 3868—Building Construction.

Signed at Washington, D.C. this 16th day of May 1980.

Dorothy P. Come,

Assistance Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION #GA79-1148 - Mod. #2 (44 FR 66135 - November 16, 1979) Chatham County, Georgia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Asbestos workers	$11.19	.55	1.10		.04
Sprinkler fitters	12.80	.85	1.20		.08

DECISION #GA79-1149 - Mod. #1 (44 FR 67307 - November 23, 1979) Richmond County, Georgia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians:					
Wiremen	$11.35	.60	3% + .30		1/4 of 1%
Cable splicers	11.60	.60	3% + .30		1/4 of 1%
Line Construction:					
Linemen & Heavy equipment operators (cranes, draglines & 5th wheel tractors);	11.35	.60	3% + .30		1/2 of 1%
Cable splicers;	11.60	.60	3% + .30		1/2 of 1%
Equipment Operators (hole digging equipment, tractor with winch & derrick, anchor machine, backhoe, & ground rod drivers	9.31	.60	3% + .30		1/2 of 1%
Truck operators	7.04	.60	3% + .30		1/2 of 1%
Groundmen	6.36	.60	3% + .30		1/2 of 1%
Sheet metal workers	10.25				.04
Sprinkler fitters	12.80	.85	1.20		.08

MODIFICATION PAGE 2

DECISION #NJ79-3029 - Mod. #3 (44 FR 1350 - January 4, 1980) Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties, New Jersey	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Plumbers:					
Zone 2	$14.555	1.40	1.42		.25

DECISION #NJ80-3024 - Mod. #1 (45 FR 29515 - May 2, 1980) Bergen, Essex, Hudson, and Passaic Counties, New Jersey	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Plumbers:					
Hudson (East Newark, Harrison, and Kearney only) and Essex Counties	$14.555	1.40	1.42		.25

DECISION #NM79-4103-Mod. #4 44-FR-63443-November 2, 1979 Statewide, New Mexico	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
SHEET METAL WORKERS:					
Zone 1	$12.77	.53	1.31		.19
Zone 2	15.02	.53	1.31		.19
Zone 3	13.77	.53	1.31		.19
Zone 4	15.62	.53	1.31		.19

DECISION NO. OR80-5106 - Mod. #1
(45 FR 8856-February 9, 1980)
Statewide, Oregon

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Ironworkers: Structural, Reinforcing, Ornamental, Riggers, Fence Erectors, Signal Men	$13.66	.93	$1.70		.10
Plasterers: Benton, Coos, Crook, Curry, Douglas, Deschutes, Harney, and Jefferson, Northern 1/3 of Klamath, Lane, Southern half of Lincoln, Linn, Wasco, and Wheeler Counties	13.76	1.00	1.00		.01
Plumbers: Clackamas, Clatsop, Columbia, Gilliam, Hood River, Jefferson, Multnomah, Sherman, Wasco, Wheeler and Northern half of Yamhill and Tillamook Counties	17.77	1.50	1.85		.13
Roofers: Benton, Lincoln, Linn, Marion, Polk, and Yamhill Counties	12.44	.45	.15		
Sheet Metal Workers: Morrow, Umatilla, Union and Wallowa Counties	15.13	3%+.68	1.14		.14

DECISION NO. OR80-5106 (Cont'd)

Line Construction:

Group No.	Base Zone	Zone 1	Zone 2	Zone 3	Zone 4
1	$16.15	$17.40	$18.15	$18.40	$20.15
2	14.59	15.84	16.59	17.34	18.59
3	13.17	14.42	15.71	15.92	17.17
4	12.57	13.82	14.57	15.32	16.57
5	10.99	12.24	12.99	13.74	14.99
6	10.32	11.57	12.32	13.07	14.30

Fringe Benefits Payments:	Groups 1 to 3	Groups 4 to 6
Health and Welfare	$.45	$.45
Pension	3%+1.70	3%+1.10
Vacation	.10	.10
Apprenticeship Training	1/2%	1/2%

DECISION NO. PA78-3054
MOD. NO. 8
(43 FR 35868 - August 11, 1978)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Laborers:					
Group 1	$10.05	.95	.85		
Group 2	9.85	.95	.85		
Group 3	9.75	.95	.85		
Group 4	9.90	.95	.85		
Group 5	9.65	.95	.85		
Group 6	10.30	.95	.85		
Group 7	10.15	.95	.85		
Group 8	10.00	.95	.85		
Line Construction					
Journeyman Lineman	15.10	.45	3%		1%
Winch truck operator	10.57	.45	3%		1%
Groundman	9.06	.45	3%		1%

MODIFICATION PAGE 5

DECISION NO. PA79-3005 - Mod. #5 (44 FR 16320 - March 16, 1979) Lycoming County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ASBESTOS WORKERS	$11.875	.80	.60		.01
BOILERMAKERS	14.64	1.175	1.00		.02
ELEVATOR CONSTRUCTORS	11.23	.745	.56	b+c	.025
ELEVATOR CONSTRUCTORS HELPERS	70%JR	.745	.56	b+c	.025
ELEVATOR CONSTRUCTORS HELPERS (PROB.)	50%JR				
LABORERS:					
Unskilled laborers, scaffold builders, wrecking, window cleaners & Demolition	7.95	.65	.55		
Masons tenders, operators of jackhammers, paving breakers vibrators & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drill operators, excavating for caisson, under pinning & pier holes (below 12"), non-mentallic pipe layers, plasterer tenders mortar men (mixed by hand), handling & using cutting or burning torches in the wrecking of buildings	8.10	.65	.55		
MILLWRIGHTS	13.52	.60	.70		.05
PAINTERS					
Brush	10.35	.75	.60		.10
Tapers	11.61	.75	.60		.10
Hazardous	10.61	.75	.60		.10

MODIFICATION PAGE 6

DECISION NO. PA79-3005 - (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	13.19	7.9%	10.3%	a	1.8%
GROUP 2	12.90	7.9%	10.3%	a	1.8%
GROUP 3	12.03	7.9%	10.3%	a	1.8%
GROUP 4	11.26	7.9%	10.3%	a	1.8%
GROUP 5	10.79	7.9%	10.3%	a	1.8%
GROUP 6	9.88	7.9%	10.3%	a	1.8%
GROUP 7	13.44	7.9%	10.3%	a	1.8%
GROUP 7-A	13.69	7.9%	10.3%	a	1.8%
GROUP 7-B	13.93	7.9%	10.3%	a	1.8%
ROOFERS & KETTLEMEN	11.15	.90	.85		
SHEET METAL WORKERS	11.95	.75	.81		.02
SPRINKLER FITTERS	13.55	.75	1.05		.08

DECISION NO. PA79-3009
MOD. NO. 6
(44 FR 26518 - May 4, 1979)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers					
Zone 1	$12.91	1.00	1.35		.08
Electricians					
Commercial					
Zone 7	12.45	.70	3%+.80		.02
Ironworkers:					
All other work					
Zone 3					
Reinforcing	12.42	1.24	1.86		.01
Laborers:					
All other work					
Class 1	9.80	.90	.85		
Class 2	9.90	.90	.85		
Class 3	9.95	.90	.85		
Class 4	10.10	.90	.85		
Class 5	10.20	.90	.85		
Class 6	9.74	.90	.85		
Sprinkler fitters					
Zone 2	13.62	.75	1.05		.10

OMIT:
Truck Drivers Originally Issued

ADD:
Truck Drivers Schedules Below

DECISION NO. PA79-3009,
MOD. NO. 6

BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
CLASS I	$8.845	.9175	.975	a+b	
CLASS II	8.945	.9175	.975	a+b	
CLASS III	9.145	.9175	.975	a+b	

CLASSIFICATIONS DEFINITIONS

CLASS I - Warehouseman, checker, fork lift driver, stake body truck (single axle), 1½ ton and under vehicles

CLASS II - Truck driver over 1½ tons, dump trucks, tandem and batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

CLASS III - Euclid type, off-highway equipment - back or belly dump trucks and double - hitched equipment straddle (Ross) carrier, lowbed trailers

FOOTNOTES:

a. Employer will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days (40 hours pay) per calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation, employees with five (5) years or more senority shall be eligible for two (2) weeks of vacation.

b. Paid Holidays: Memorial Day; Independence Day; Labor Day; Veterans Day and (5) personal holidays for employees who have worked a minimum of thirty days and are on the employer's senority list, provided he works the schedule work days before and after the said holidays.

DECISION NO. PA79-3009, MOD. NO. 6

SITE PREPARATION, PAVING, AND UTILITIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$8.695	.9175	.975	a+b	
CLASS 2	8.795	.9175	.975	a+b	
CLASS 3	8.995	.9175	.975	a+b	

FOOTNOTES:

a. Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year, During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitile to all days of vacation.

b. Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the scheduled work days before and after said holiday; nad employee gives employer one (1) week's notice requesting a personal holiday. The eligibility for personal holidays will be as follows: Employee will earn one (1) personal holiday every two (2) months up to a maximum of five (5) personal holidays per calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all person holidays.

CLASSIFICATIONS

SITE PREPARATION, PAVING, AND UTILITIES

CLASS 1: Helpers, Stake Body Truck (single axle, Dumpster)

CLASS 2: Dump Trucks, Tandem & Batch Trucks, Semi-Trailers, Agitator Mixer Trucks, and Dumpcrete Type Vehicles, Asphalt Distributors, Farm Tractor when used for Transportation, Stake Body Truck (Tandem)

CLASS 3: Euclid Type, Off-Highway Equipment or Belly Dump Trucks and Double Hitched Equipment, Straddle (Ross) Carrier, Low-Bed Trailers

Decision NO. VA78-3075-Mod#6 (43 FR 51590-November 3,1978 York County and the Cities of Hampton and Newport News (including Langley AFB, Fort Eustis and Fort Monroe) Virginia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians:					
Zone 1-within a 16 air mile radius of 7812 Warwick Blvd Newport News:					
Wireman	$11.05	.60	8%		1%
Cable Splicer	11.30	.60	8%		1%
Zone 2-beyond a 16 air mile radius of 7812 Warwick Blvd Newport News:					
Wireman	12.05	.60	8%		1%
Cable Splicer	12.30	.60	8%		1%

DECISION NO. WA80-5107 - Mod. #1
(45 FR 15037 - March 7, 1980)
Statewide, Washington

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians:					
Clallam, Jefferson, King and Kitsap Cos.:					
Electricians	$16.65	.98	3%+1.30		.07
Cable Splicers	18.32	.98	3%+1.30		.07
Plumbers:					
Chelan, Clallam, King, Kitsap (North of 47° 15' N. Lat.), Douglas (West of 119° 30' W. Long.), Jefferson and Okanogan (except area lying east of 119°30' W. Long., North to 48°30' N. Lat.)	15.71	.94	1.65	1.61	.12
Clark and Skamania Counties south of an east-west line drawn through Woodland eastward to the Klickitat County Line	17.77	1.50	1.85		.13
Roofers:					
Island, San Juan, Skagit, and Whatcom Counties:					
Roofers and Waterproofers	11.45	.85	.50		.01
Slate and Tile Roofers	11.95	.85	.50		.01
Terrazzo Workers; Tile Setters:					
San Juan, Skagit (including the Cities of Burlington, Sedro-Wooley, Concrete, and north thereof) and Whatcom Counties	13.84	.80	1.25		.06

DECISION NO. WA80-5107 (Cont'd)

Line Construction:

Group No.	Base Zone	Zone 1	Zone 2	Zone 3	Zone 4
1	$16.15	$17.40	$18.15	$18.40	$20.15
2	14.59	15.84	16.59	17.34	18.59
3	13.17	14.42	15.71	15.92	17.17
4	12.57	13.82	14.57	15.32	16.57
5	10.99	12.24	12.99	13.74	14.99
6	10.32	11.57	12.32	13.07	14.30

Fringe Benefits Payments:	Groups 1 to 3	Groups 4 to 6
Health and Welfare	$.45	$.45
Pension	3%+1.70	3%+1.10
Vacation	.10	.10
Apprenticeship Training	1/2%	1/2%

SUPERSEDEAS DECISION

STATE: California

COUNTIES: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura

DECISION NUMBER: CA80-5117 DATE: Date of Publication

Supersedes Decision No. CA78-5123 dated August 18, 1978, in 43 FR 36839

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$16.20	$1.30	$1.37		.07
BOILERMAKERS	15.21	1.275	1.25	1.00	.04
BRICKLAYERS; Stonemasons:*					
Area 1	14.09	1.13	1.34		.12
Area 2	14.49	1.05	2.11		.10
Area 3	13.35	1.30	1.75		.05
Area 4					
Area 5	13.85	1.20	2.35		.07
Area 6	14.37	1.15	1.50		.05
BRICK TENDERS	9.48	1.25	2.55	.95	.12
CARPENTERS:					
Carpenters	11.57	1.62	2.16	1.00	.09
Saw Filers	11.65	1.63	2.16	1.00	.09
Table Power Saw Operators	11.67	1.63	2.16	1.00	.09
Shinglers; Piledrivermen, Bridge or Dock Carpenters; Derrick Bargemen; Rock Slinger	11.70	1.63	2.16	1.00	.09
Hardwood Floor Layers	11.77	1.63	2.16	1.00	.09
Pneumatic Nailer	11.82	1.63	2.16	1.00	.09
Millwrights	12.07	1.63	2.16	1.00	.09
CEMENT MASONS:					
Cement Masons	9.41	1.10	1.75	1.00	.08
Cement Floating and Troweling Machine	9.66	1.10	1.75	1.00	.08
DRYWALL Installers	12.53	1.63	2.16	1.00	.09
ELECTRICIANS:*					
Area 1:					
Electricians	15.98	.75	3%+1.71		.09
Cable Splicers	16.28	.75	3%+1.71		.09
Area 2:					
Electricians; Technicians	16.00	1.10	3%+1.95		.15
Cable Splicers	17.60	1.10	3%+1.95		.15
Area 3:					
Electricians	13.12	1.15	3%+1.95		.12
Cable Splicers	13.42	1.15	3%+1.95		.12
Traffic Signal and Street Lighting:					
Electricians	13.12	1.15	3%+1.95		.12
Utility Technician No.1	9.84	1.15	3%+1.95		.12
Utility Technician No.2	9.18	1.15	3%+1.95		.12

*SEE AREA DESCRIPTIONS - Page 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:* (Cont'd)					
Area 3: (Cont'd)					
Tunnel:					
Electricians	$13.52	$1.05	1%+1.70		.02
Cable Splicers	13.82	1.05	1%+1.70		.02
Sound Technicians:					
Sound Technicians (on new building construction)	12.67	.75	3%		
Sound Technicians (on modification of existing buildings)	10.74	.75	3%		
Area 4:					
Electricians	16.39	.81	3%+1.45		.02
Cable Splicers	17.14	.81	3%+1.45		.02
Area 5:					
Electricians	15.56	.85	3%+2.00		.04
Cable Splicers	16.06	.85	3%+2.00		.04
Area 6:					
Electricians	14.90	1.21	3%+2.90		.04
Cable Splicers	15.40	1.21	3%+2.90		.04
Tunnel:					
Electricians	16.39	1.21	3%+2.90		.04
Cable Splicers	16.69	1.21	3%+2.90		.04
Area 7:					
Electricians	16.18	1.23	3%+1.50		.03
Cable Splicers	17.79	1.23	3%+1.50		.03
Area 8:					
Electricians	16.10	1.10	3%+1.50		.03
Cable Splicers	17.10	1.10	3%+1.50		.03
Area 9:					
Electricians	16.71	1.20	3%+1.95		.02
Cable Splicers	18.38	1.20	3%+1.95		.02
ELEVATOR CONSTRUCTORS:*					
Area 1:					
Elevator Constructors	15.41	1.045	.82	a	.035
Area 2:					
Elevator Constructors	16.37	.895	.82	a	.035

*SEE AREA DESCRIPTIONS - following page

AREA DESCRIPTIONS

BRICKLAYERS; Stonemasons:
Area 1: Imperial County
Area 2: Inyo, Kern and Mono Counties
Area 3: Los Angeles and Orange Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Santa Barbara and San Luis Obispo Counties
Area 6: Ventura County

ELECTRICIANS:
Area 1: Imperial County
Area 2: Kern County
Area 3: Los Angeles County
Area 4: Orange County
Area 5: Riverside County
Area 6: Inyo, Mono and San Bernardino Counties
Area 7: San Luis Obispo County
Area 8: Santa Barbara County
Area 9: Ventura County

ELEVATOR CONSTRUCTORS:
Area 1: Imperial, Inyo, Kern (south of Tehachapi Range), Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties
Area 2: Kern County (north of Tehachapi Range)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS:*					
Area 1	$10.90	.67	.90		
Area 2	11.19	.67	1.45		.04
IRONWORKERS:					
Fence Erectors	11.11	1.29	2.47	1.65	.07
Reinforcing	12.00	1.29	2.47	1.65	.07
Ornamental; Structural	12.00	1.29	2.47	1.65	.07
IRRIGATION and LAWN SPRINKLERS:*					
Area 1	10.45	10%	16%	13%	1%
LATHERS:					
Area 1	9.13	.60	1.30	.70	.05
Area 2	12.50	.70	.90		.03
Area 3	11.98	1.05	1.13	1.50	.02
Area 4	7.72	.87		3.20	
Area 5	11.67	.82	1.25	1.50	
Area 6	12.50	.85	1.00	.50	.03
LINE CONSTRUCTION:*					
Area 1:					
Groundmen	11.44	.75	3%+1.45		
Linemen	14.30	.75	3%+1.45		
Cable Splicers	14.58	.75	3%+1.45		
Area 2:					
Groundmen	9.94	.90	3%+1.60		.15
Linemen	13.25	.90	3%+1.60		.15
Cable Splicers	14.58	.90	3%+1.60		.15
Area 3:					
Groundman, 1st year	11.43	.81	3%+1.45		.02
Groundman, after 1st year	12.12	.81	3%+1.45		.02
Lineman, Heavy Equipment Operators	14.04	.81	3%+1.45		.02
Cable Splicers	14.69	.81	3%+1.45		.02
Area 4:					
Groundmen	9.86	1.25	3%+1.95		
Linemen	13.14	1.25	3%+1.95		
Cable Splicers	13.44	1.25	3%+1.95		
Area 5:					
Groundmen	9.41	1.11	3%+2.00		.04
Linemen	12.72	1.11	3%+2.00		.04
Cable Splicers	13.44	1.11	3%+2.00		.04

*See AREA DESCRIPTIONS - Page 6

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:* (Cont'd)					
Area 6:					
Groundmen	$ 9.65	.85	3%+1.65		.04
Linemen; Line Equipment Operators	13.08	.85	3%+1.65		.04
Cable Splicers	13.38	.85	3%+1.65		.04
Area 7:					
Groundmen	9.66	1.00	1%+1.35		.03
Linemen; Line Equipment Operators	12.26	1.00	1%+1.35		.03
Cable Splicers	13.48	1.00	1%+1.35		.03
Area 8:					
Groundmen	12.93	1.00	3%+1.05		.02
Linemen	14.21	1.00	3%+1.05		.02
Cable Splicers	15.63	1.00	3%+1.05		.02
Area 9:					
Groundmen	9.64	1.10	3%+1.50		.03
Linemen	13.25	1.10	3%+1.50		.03
Cable Splicers	14.25	1.10	3%+1.50		.03
MARBLE SETTERS:					
Area 1	12.42	1.50	1.62	1.18	
Area 2	12.69	.81	1.17		.08
MARBLE, TERRAZZO & TILE FINISHERS:					
Area 1	9.44	.81	1.17		.08
PAINTERS:*					
Area 1:					
Brush; Paint Burners	13.21	1.23	1.43	.75	.07
Paperhangers	13.71	1.23	1.43	.75	.07
Iron, steeland bridge (swing stage)	13.96	1.23	1.43	.75	.07
Sheet Rock Tapers	13.26	1.23	1.43	.75	.07
Brush (Swing Stage); Spray	13.46	1.23	1.43	.75	.07
Steeplejack	14.80	1.23	1.43	.75	.07

*SEE AREA DESCRIPTIONS - following page

AREA DESCRIPTIONS

GLAZIERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, San Luis Obispo and Ventura Counties

LATHERS:
Area 1: Inyo, Kern and MOno Counties
Area 2: Los Angeles County(except City of Lancaster)
Area 3: Ventura County
Area 4: San Luis Obispo County
Area 5: Santa Barbara County
Area 6: Orange County

LINE CONSTRUCTION:
Area 1: Imperial County
Area 2: Kern County
Area 3: Orange County
Area 4: Los Angeles County
Area 5: Inyo, Mono and San Bernardino Counties
Area 6: Riverisde County
Area 7: San Luis Obispo County
Area 8: Ventura County
Area 9: Santa Barbara County

MARBLE SETTERS:
Area 1: Inyo and Mono Counties
Area 2: Imperial County

MARBLE, TERRAZZO and TILE FINISHERS:
Area 1: Imperial County

PAINTERS:
Area 1: Imperial, Orange, Riverside, Los Angeles (Pomona Area), San Bernardino (excluding western portion)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:* (Cont'd)					
Area 2:					
Brush	$12.73	.86	.80	.60	.02
Structural steel and bridge; Paint Burner	12.85	.86	.80	.60	.02
Tapers	14.06	.86	.80	.60	.02
Brush Swing Stage (13 stories or less); Paperhangers; Sandblasters; Spray Painters	13.13	.86	.80	.60	.02
Brush Swing Stage (over 13 stories)	13.10	.86	.80	.60	.02
Structural steel and bridge, Swing Stage (13 stories or less)	13.13	.86	.80	.60	.02
Structural steel and bridge, Swing Stage (excess of 13 stories)	13.25	.86	.80	.60	.02
Spray Painter; Sandblaster, Swing Stage (excess of 13 stories)	13.35	.86	.80	.60	.02
Spray Painters; Sandblaster, Swing Stage (13 stories or less); Past Machine; Special coating Spray	12.91	.71	.80	.60	.02
Steeplejack	13.65	.71	.80	.60	.02
Area 3:					
Brush	10.23	.80	.90		.03
Brush or Roller (swing stage); Paperhangers; Taping Joint Sheet Rock	10.48	.80	.90		.03
Spray; Sandblasters	10.73	.80	.90		.03
Steeplejack	11.73	.80	.90		.03
Area 4:					
Brush; Pot Tender Paperhangers; Paste Machine Operators; Iron and Steel	13.41	1.25	1.40		.03
Spray; Taper; Sandblasters	13.66	1.25	1.40		.03
Steeplejack	13.91	1.25	1.40		.03
	14.41	1.25	1.40		.03

*SEE AREA DESCRIPTIONS -

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:* (Cont'd)					
Parking Lot Striping Work and/or Highway Markers:					
Area 1:					
Striper	$11.82	.55	.40	b	
Traffic Delineating Device Applicator; Wheel Stop Installer; Traffic Surface; Sandblaster	10.72	.85	.50	b	
Slurry Seal Operation:					
Mixer	10.72	.85	.50	b	
Squeegee Man	9.14	.85	.50	b	
Applicator Operator	9.14	.85	.50	b	
Shuttleman	9.14	.85	.50	b	
Top Man	7.60	.85	.50	b	
Area 2:					
Traffic Delineating Device Applicator	10.72	.85	.50	b	
Wheel Stop Installer; Surface Sandblaster	10.72	.85	.50	b	
Striper	10.33	.85	.50	b	
Slurry Seal Operation:					
Mixer Operator	10.33	.85	.50	b	
Squeegee Man	9.14	.85	.50	b	
Applicator Operator	8.54	.85	.50	b	
Shuttleman	9.14	.85	.50	b	
Top Man	7.60	.85	.50	b	
PLASTERERS:					
Area 1	11.03				
Area 2	12.335	.93	1.85		.12
Area 3	15.95				.01
Area 4	12.00				
Area 5	8.69	.70	1.05		.01
Area 6	14.51	1.30	3.00		.02
PLASTERERS TENDERS:					
Area 1	11.77	1.25	2.55		
Area 2	10.92	1.25	2.55	.95	
Area 3	11.775	1.25	2.55	1.10	
Area 4	10.08	1.25	2.55	1.15	
Area 5	12.43	1.25	2.55	.95	
Area 6	13.58	1.25	2.60	1.10	

*SEE AREA DESCRIPTIONS - Following Page

AREA DEFINITIONS

PAINTERS: (Cont'd)
Area 2: Inyo, Los Angeles (except Pomona Area), Mono, San Bernardino (west of a line north of Trono including China Lake Area, Johannesburg, Boron, south including the Wrightwood Area)
Area 3: Kern County
Area 4: San Luis Obispo, Santa Barbara and Ventura Counties

Parking Lot Striping Work and/or Highway Markers; and Slurry Seal Operation:
Area 1: Inyo and Mono Counties
Area 2: Remaining Counties

PLASTERERS:
Area 1: Imperial County
Area 2: Los Angeles and Orange Counties
Area 3: Riverside and San Bernardino Counties
Area 4: San Luis Obispo County
Area 5: Santa Barbara County
Area 6: Ventura County

PLASTERERS TENDERS:
Area 1: Imperial, Inyo, Mono, Riverside and San Bernardino Counties
Area 2: Kern County
Area 3: Los Angeles and Orange Counties
Area 4: San Luis Obispo County
Area 5: Santa Barbara County
Area 6: Ventura County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS; Steamfitters:*					
Area 1	$13.83	10%	16%	13%	2%
Area 2	13.88	1.05	2.25	1.45	.17
REFRIGERATION and AIR CONDITIONING:*					
Area 1	10.70	.96	.85	1.00	.05
Area 2	13.82	2.00	2.00	1.52	.30
ROOFERS:*					
Area 1	12.79	.80	1.05	1.00	
Area 2	12.05	.80	.60		.02
Area 3	12.65	.80	1.00	1.25	
Area 4	13.31	.97	2.05		.065
Area 5	14.17	.85	1.00		.05
SHEET METAL WORKERS:*					
Area 1	14.96	1.04	2.24		.01
Area 2	14.51	1.14	1.80		.02
Area 3	15.16	1.14	2.52		.10
Area 4	14.16	1.14	2.64		.09
Area 5	13.90	1.14	1.91		.16
Area 6	14.93	1.14	2.52		
SOFT FLOOR LAYERS:*					
Area 1	11.52	.81	1.45		.10
Area 2	12.72	.75	1.20	.75	.08
Area 3	12.29	.75	.75	1.18	.07
SPRINKLER FITTERS:*					
Area 1	15.52	.75	1.05		.08
Area 2	16.83	.83	1.05		.09
TERRAZZO WORKERS:*					
Area 1	12.69	.81	1.17		.08
TILE SETTERS:*					
Area 1	12.69	.81	1.17		.08
Area 2	13.81	1.06	1.40		.10
Area 3	10.50	1.20	1.85		.07
Area 4	12.95	1.03	1.35		
TILE FINISHERS:*					
Area 1	9.96	1.39	1.30		.13

*See AREA DESCRIPTIONS - Following Page

AREA DESCRIPTIONS

PLUMBERS; Steamfitters:
Area 1: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties
Area 2: Inyo, Kern, and Mono Counties

REFRIGERATION and AIR CONDITIONING:
Area 1: Riverside and San Bernardino Counties
Area 2: Los Angeles and Orange Counties

ROOFERS:
Area 1: Imperial County
Area 2: Inyo, Kern and Mono Counties
Area 3: Riverside and San Bernardino Counties
Area 4: Los Angeles, Orange and Ventura Counties
Area 5: San Luis Obispo and Santa Barbara Counties

SHEET METAL WORKERS:
Area 1: Imperial County
Area 2: Kern County and all of Inyo and Mono Counties, Los Angeles County (that portion north of a straight line drawn between Gorman and Big Pines)
Area 3: Los Angeles County (remaining portion)
Area 4: Orange County
Area 5: Riverside and San Bernardino Counties
Area 6: San Luis Obispo, Santa Barbara and Ventura Counties

SOFT FLOOR LAYERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, Riverside, Santa Barbara, San Luis Obispo, San Bernardino and Ventura Counties
Area 3: Kern County, including that portion lying east of the Los Angeles Aqueduct and that portion of Inyo County included within the Inyo-Kern Naval Reservation

SPRINKLER FITTERS:
Area 1: Imperial, Inyo, Kern, Mono, Orange (except Santa Ana), Riverside, San Bernardino (except Ontario, San Luis Obispo, Santa Barbara and Ventura (except Santa Paula, Point Mugu and Port Hueneme)
Area 2: Los Angeles (Los Angeles City and Area within 25 miles and Pomona), Orange (Santa Ana); San Bernardino (Ontario), and Ventura (Santa Paula, Point Mugu and Port Hueneme)

TERRAZZO WORKERS:
Area 1: Imperial County

AREA DESCRIPTIONS

TILE SETTERS:
Area 1: Imperial County
Area 2: Los Anglees, Orange and Ventura Counties
Area 3: San Luis Obispo and Santa Barbara Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Inyo, Kern and Mono Counties

TILE FINISHERS:
Area 1: Los Angeles, Orange, and Ventura Counties

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Employer contirbutes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F

b. Employer contributes $2.3 per hour to Holiday Fund plus $.14 per hour to Vacation Fund for the first year of employment, 1 year but less than 5 years $.34 per hour to Vacation Fund, 5 years but less than 10 years $.44 per hour to Vacation Fund, over 10 years $.54 per hour to Vacation Fund

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Group 1	$ 9.98	$1.05	$2.55	.95	.12
Group 2	9.13	1.05	2.55	.95	.12
Group 3	9.33	1.05	2.55	.95	.12
Group 4	9.48	1.05	2.55	.95	.12
Group 5	9.63	1.05	2.55	.95	.12
(GUNNITE)					
Group 1	10.72	1.25	2.55	.95	
Group 2	10.22	1.25	2.55	.95	
Group 3	9.26	1.25	2.55	.95	
(TUNNEL)					
Group 1	10.98	1.25	2.55	.95	
Group 2	11.01	1.25	2.55	.95	
Group 3	11.17	1.25	2.55	.95	
Group 4	11.45	1.25	2.55	.95	

LABORERS

Group 1: Cleaning and Handling of Panels Forms; Concrete Screeding for rough strike-off; Concrete, water curing; Demolition Laborer, the cleaning of brick and lumber; Dry Packing of concrete, plugging, filling of Shee-bolt Holes; Fire Watcher, Limber, Brush Loaders, Pilers and Debris Handlers; Flagman; Gas, Oil and/or Water Pipeline Laborer; Laborer, general or construction; Laborer, general cleanup; Laborer, landscaping; Laborer, jetting, temporary water and air lines; Mateiral Hoiseman (walls, slabs, floors and decks); Rigging and Signaling; Scaler; Slip Form Raisers; Slurry Seal Crews (Mixer Operator, Applicator Operator, Squeegee Man, Shuttle Man, Top Man); Striper, concrete or other paved surfaces; Tarman and Mortar Man; Tool Crib or Tool House Laborer; Traffic Delineating Device Applicator; Window Cleaner; Wire Mesh, pulling all concrete pouring operations

Group 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger Mixer and handling bulk cement); Cesspool Digger and Installer, Chucktender; Chute Man, pouring concrete, the handling of the Chute from Ready Mix Trucks, such as walls, slabs, decks, floors, foundations, footings, curb, gutters and sideqlaks; Concrete Curer, Impervious Membrane and Form Oiler; CuttingTorch Operator (demolition); Fine Grader, highways and street paving, airport, runways, and similar type heavy construction; Gas, Oil and/or Water Pipeline Wrapper, Pot Tender and Form Man; Guineau Chaser; Headerboard Man, asphalt; Laborer, packing rod steel and pans; Power Broom Sweepers (small); Riprap Stonepaver, placing stone or wet sacked concrete; Roto Scraper and Tiller; Sandblaster (Pot Tender); Septic Tank Digger and Installer (Leadman); Tank Scaler and Cleaner; Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type Brush Shredders; Underground Laborer, including Caisson Bellower

Group 3: Asphalt Raker, Luteman, Ironer and Asphalt Spreader Boxes (all types); Buggymobile Man; Concrete Core Cutter, Grinder or Sander; Concrete Cutting Torch; Concrete Saw Man, cutting, scouring old or new concrete; Driller, Jackhammer, 2½ ft. drill steel or longer; Dri Pak-it Machine; Gas, Oil and/or Water Pipeline Wrapper, 6" pipe and over, by any method, inside and out; Hydro Seeder and similar type; Impact Wrench, Mutli-plate; Kettlemen, Potmen and Men applying asphakt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, Vibrating Machines, Pavement Breakers, Air Balsting, Come-alongs, and similar mechanical tools not seperately classified herein; Pipelayer's Backup Man, coating, grouting, making of joints, sealing, caulking, diapering and including Rubber Gasket Joints, pointing and any and all other services; Rovk Slinger; Rotary Scarificer or Multiple Head Concrete Chipping Scafifier; Steel Headerboard Man and Guideline Setter; Tampers, Barko, Wacker and similar type; Trenching Machine, ahnd propelled

LABORERS (Cont'd)

Group 4: Cribber, Shorer, Lagging, Sheeting and Trench Bracing, Hand-guided Lagging Hammer; Head Rock Slinger; Laser Beam; Oversize Concrete Vibrator Operator, 70 lbs. and over; Pipelayer, including water, sewage, solid, gas or air; Prefabricated Manhole Installer; Sandblaster (Nozzleman), water blasting; Welding in connection with Laborers' work

Group 5: Blasters Powderman, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding Jackhammer, whether Core, Diamond, Wagon, Track, Multiple Unit, and any and all types of mechanical drills

(GUNNITE)

Group 1: Nozzlemen and Rodmen

Group 2: Gunmen

Group 3: Reboundmen

(TUNNEL)

Group 1: Batch Plant Laborers; Bull Gang Mucker, Trackman; Concrete Crew, including Rodders and Spreaders; Changehouseman; Dumpman; Dumpman (outside); Swamper (Brakeman and Switchman on tunnel work); Tunnel materials handling man; Tool Man

Group 2: Cable Tender; Chuck Tender; Nipper; Steel Form Raiser and Setter's Helper; Vibratorman, Jackhammer, pneumatic tools (except Driller); Loading and unloading Agitator Cars; Pot Tender, using mastic or other materials

Group 3: Balster, Driller, Powderman; Chemical Grout Jetman; Cherry Pickerman; Grout Gunman; Grout Mixerman; Grout Pumpman; Jackleg Miner; Jumbo Man; Kemper and other pneumatic concrete placer Operator; Miner, tunnel (hand or machine); Powderman (Primer House); Primer Man; Shotcrete Man; Steel Form Raiser and Setter; Timberman; Retimber (wood or steel); Tunnel Concrete Finisher; Nozzleman; Operating Troweling and/or Grouting Machine; Sandblaster

Group 4: Shaft, Raise Miner; Diamond Driller

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: DREDGING (Hydraulic Suction Dredges)					
LEVERMAN	$11.60	.95	$2.00	.50	.04
WATCH ENGINEER; Welder	11.02	.95	2.00	.50	.04
DECKMATE	10.54	.95	2.00	.50	.04
WINCHMAN (Stern Winch or Dredge)	10.47	.95	2.00	.50	.04
BARGEMAN; Deckhand; Fireman; Oiler; Leveehand	9.93	.95	2.00	.50	.04
(Clamshell Dredges)					
LEVERMAN	11.60	.95	2.00	.50	.04
WATCH ENGINEER	11.02	.95	2.00	.50	.04
DECKMATE	10.54	.95	2.00	.50	.04
BARGE MATE	10.47	.95	2.00	.50	.04
BARGEMAN; Deckhand; Fireman; Oiler	9.93	.95	2.00	.50	.04
POWER EQUIPMENT OPERATORS:					
Group 1	11.60	1.10	2.00	.85	.14
Group 2	11.88	1.10	2.00	.85	.14
Group 3	12.17	1.10	2.00	.85	.14
Group 4	12.31	1.10	2.00	.85	.14
Group 5	12.53	1.10	2.00	.85	.14
Group 6	12.64	1.10	2.00	.85	.14
Group 7	12.76	1.10	2.00	.85	.14
Group 8	12.93	1.10	2.00	.85	.14
Group 9	13.06	1.10	2.00	.85	.14

POWER EQUIPMENT OPERATORS

Group 1: Brakeman; Compressor (less than 600 C.F.M.); Engineer Oiler; Generator; Heavy Duty Repairman; Helper; Pump; Signalman; Switchman

Group 2: Compressor (600 C.F.M. or larger); Concrete Mixer, skip type, Conveyor; Fireman; Hydrostatic Pump; Oiler Crusher (asphalt or concrete plant); Plant Operator; Generator, Pump or Compressor; Rotary Drill Helper (oilfield); Skiploader, wheel type up to 3/4 yard without attachments; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter Raidoman (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driven Jumbo Form Setter; Ross Carrier (job site); Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixerman (aspahlt or concrete); Chip Spreading Machine; Concrete Pump (small portable); Bridge type Unloader and Turntable; Dinkey Locomotive or Motorman (up to and inlcidung 10 tons); Equipment Greaser (Greaser Truck); Helicopter Hoist; Highline Cableway Singlaman; Hydra-hammer-aero Stomper; Power Sweeper; Roller (compacting); Screed (asphalt or concrete); Trenching Machine (up to 6 ft.)

Group 5: Asphalt Plant Engineer; Backhoe (up to and including 3/4 yard); Batch Plant; Bit Sharpener; Concrete Joint Machine (canal and similar type); Concrete Planer; Deck Engine; Derrickman (oilfield type); Drilling Machine Operator (including water wells); Forklift (under 5 ton capacity); Hydrographic Seeder Machine (straw, pulp or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanic Berm, Curb or Gutter (aspahlt or concrete); Mechanical Finisher (concrete-Clary, Johnson, Bidwell, or similar); Pavement Breaker (truck mounted); Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment (single engine, up to and including 25 yards struck); Self-propelled Tar Pipelining Machine; Slip Form Pump (power driven hydraulic lifting device for concrete forms); Skiploader (Crawler and wheel type, over 3/4 yard and up to and including 1½ yards); Stinger Crane (Austin-Western or similar type); Tractor, Bulldozer, Tamper Scraper (single engine, up to 100 h.p., flywheel and similar types, up to and including D-5 and similar types); Tugger Hoist, 1 drum; Tunnel Locomotive (over 10 tna up to and including 30 tons); Welder-general

POWER EQUIPMENT OPEATORS (Cont'd)

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); Bridge Crane Operator; Cast-in-place Pipe Laying Machine; Combination Mixer and Compressor (Gunite work); Compactor, self-propelled; Concrete Mixer - paving; Concrete Pump (truck mounted); Crane Operator up to and including 25 ton capacity) (Long-boom pay applicable); Crushing Plant; Drill Doctor; Elevating Grader; Forklift (over 5 tons); Grade Checker; Grade-all; Grouting Machine; Heading Shield; Heavy Duty Repairman; Hoist Operator (Chicago Boom and similar type); Kolman Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Mobile; Lift Slab Machine (Vagtborg and similar types); Loader (Athey-Euclid, Sierra and similar type); Mateiral Hoist; Mucking Machine (1/4 yard rubber tired, rail or track type); Pneumatic Concrete Placing Machine (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun; Rotary Drill (excluding Caisson type); Rubber-tired Earth Moving Equipment (single engine, Caterpiller, Euclid, Athey Wagon, and similar types with any and all attachments, over 25 yards struck); Rubber-tired Scraper (self-loading paddle wheel type, John Deere, 1040 and similar single unit); Skiploader (Crawler and wheel type, over 1½ yards, up to and including 6½ yards); Surface Heaters and Planer; Trenching Machine (over 6 ft. depth capacity); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger than D-5-100 flywheel h.p. and over, or similar); Bulldozer, Tamper, Scraper and Push Tractor single engine); Tractor (boot attachments); Traveling Pipe Wrapping, Cleaning and Bending Machine; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Clamshell (over 3/4 yd. and up to 5 cu. yards m.r.c.) (Long boom pay applicable); Self-propelled Curb and Gutter Machine

Group 7: Crane, over 25 ton up tc and including 100 tons m.r.c. (Long boom pay applicable); Derrick Barge (Long boom pay applicable); able); Dual Drum Mixer; Heavy Duty Repairman, welder combination; Hoist, Sitff-legs, Guy Derrick or similar type, up to and including 100 tons (Long Boom pay applicable); Monorail Locomotive (diesel gas or electric); Motor Patrol-blade Operator (single engine); Mu-Multiple Engine Tractor (Euclid and similar type, except Quad 9 Cat); Rubber-tired Earth Moving Equipment (single engine, over 50 yards struck); Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpiller and similar)(over 25 yards and up to 5 cu. yds. struck); Shovel, Backhoe, Dragline, Clamshell (over 5 cu. yds. m.r. c.) (Long Boom pay applicable); Tower Crane Repairman; Tractor Loader (Crawler and wheel type, over 6½ yards); Welder, certified; Woods Mixer and similar Pugmill Equipment

POWER EQUIPMENT OPERATORS (Cont'd)

Group 8: Auto Grader; Automatic Slip Form; Crane-over 100 tons (Long boom pay applicable); Hoist, Stiff Legs, Guy Derrick or similar types (capable of hoisting 100 tons or more)(Long boom applicable); Mass Excavator, less than 750 cu. yards; Mechanical Finishing Machine; Mobile Form Traveler; Motor Patrol, multi-engine); Pipe Mobile Machine; Rubber-tired earth moving equipment (multiple engine, Euclid, Caterpiller and similar type, over 50 cu. yards struck); Rubber-tired Self-loading Scraper (paddle wheel, auger type self-loading, 2 or more units); Rubber-tired Scraper, pushing one another without Push Cat. Push-pull (50¢ per hour additional to base rate); Tandem Equipment (2 units only); Tandem Tractor (Quad 9 or similar type); Tunnel Mole Boring Machine

Group 9: Canal Liner; Canal Trimmer; Helicopter Pilot; Highline Cableway; Remote Controlled Earth Moving Equipment ($1.00 per hour additional to base rate); Wheel Excavator (over 750 cu. yard)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$9.52	$1.25	.75	$1.10	.10
Group 2	9.60	1.25	.75	1.10	.10
Group 3	9.66	1.25	.75	1.10	.10
Group 4	9.75	1.25	.75	1.10	.10
Group 5	9.78	1.25	.75	1.10	.10
Group 6	9.80	1.25	.75	1.10	.10
Group 7	9.84	1.25	.75	1.10	.10
Group 8	9.85	1.25	.75	1.10	.10
Group 9	9.90	1.25	.75	1.10	.10
Group 10	9.93	1.25	.75	1.10	.10
Group 11	9.98	1.25	.75	1.10	.10
Group 12	10.00	1.25	.75	1.10	.10
Group 13	10.05	1.25	.75	1.10	.10
Group 14	10.30	1.25	.75	1.10	.10
Group 15	10.55	1.25	.75	1.10	.10
Group 16	10.65	1.25	.75	1.10	.10
Group 17	10.75	1.25	.75	1.10	.10
Group 18	11.05	1.25	.75	1.10	.10
Group 19	11.55	1.25	.75	1.10	.10

TRUCK DRIVERS

Group 1: Warehouseman and Teamster

Group 2: Driver of vehicle or combinations of vehicles of 2 axles (including all vehicles less than six tons); Traffic Control Pilot Car, excluding moving heavy equipment permit load

Group 3: Truck mounted Power Broom

Group 4: Drivers of vehicles or combination of vehicles of 3 axles

Group 5: Bootman; Cement Distributor; Fuel Truck; Road Oil Spreader Truck; Water Truck, 2 axle

Group 6: Dump, of less than 16 yards

Group 7: Transit-mix, under 3 yards; Dumpcrete, less than 6½ yards

Group 8: Truck Repairman Helper

Group 9: Water Truck, 3 or more axles

Group 10: PB and similar type truck when performing within the Teamsters' jurisdiction; Pipeline and Utility working Truck including Winch, but limited to truck applicable to Pipeline and Untility work, where a composite crew is used; Slurry Driver; Truck Greaser and Tireman (50¢ per hour additional for Tireman)

Group 11: Transit-mix, 3 yards or more; Dumpcrete, 6½ yards and over

Group 12: Driver of vehicle or combination of vehicles of 4 or more axles

Group 13: Dump, 16 yards but less than 25 yards

Group 14: A-Frame of Swedish Crane, or similar type of equipment driver; Fork Lift Driver; Ross Carrier, highway

Group 15: All Off-highway Equipment within Teamsters' jurisdiction (off highway combination of vehicles or equipment with multiple power sources, $1.00 per hour additional); Dump, 25 yards or more; Truck Repairman

Group 16: Truck Repairman Welder

Group 17: Low Bed Driver, 9 axle or over

Group 18: Water Pull, single engine with attachments

Group 19: Water Pull, twin engine with attachments

SUPERSEDEAS DECISION

STATE: INDIANA COUNTIES: *SEE BELOW
DECISION NUMBER: IN80-2016 DATE: Date of Publication
Supersedes Decision No. IN79-2002 dated January 26, 1979, in 44 FR 5606
DESCRIPTION OF WORK: Building Construction (Does not include Single Family Homes and Apartments up to and Including 4 Stories).

*Adams, Allen, Bartholomew, Benton, Blackford, Boone, Cass, Clinton, DeKalb, Delaware, Fountain, Fulton, Grant, Hamilton, Hancock, Hendricks, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Noble, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Warren, Wells, White, & Whitley

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Adams, Allen, Blackford, Clinton, DeKalb, Grant, Huntington, Jay, Miami, Noble, Steuben, Wabash, & Wells Cos.	$13.80	.55	1.25		
Cass, Fulton, & White Cos.	13.44	.70	.90		
Remaining Cos.	13.65	.50	1.20		
BOILERMAKERS	14.25	1.275	1.00		.03
BRICKLAYERS; Caulkers; Cleaners; Pointers; & Stonemasons:					
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wells, & Whitley Cos.	12.21	.57	.50		.02
Bartholomew & Monroe Cos.	12.05	.50	.30		.02
Benton, Clinton, Fountain, Tippecanoe, Warren, & White Cos.	11.99	.48	.60		.02
Blackford, Delaware, Hamilton, Jay, Madison, & Tipton Cos.	11.85	.50	.75		.01
Boone, Hancock, Hendricks, Johnson, Marion, Montgomery, Morgan & Shelby Cos.	13.04	.60	.55		.08
Cass & Fulton Cos.	11.10	1.00	.40		
Grant & Wabash Cos.	11.33	.85	.60		
Howard & Maimi Cos.	11.08	.95	1.00		.05
CARPENTERS: Millwrights; Piledrivermen & Soft Floor Layers:					
Adams, Cass, Fulton, Grant, Howard, Huntington, Miami, Tipton, Wabash, & Wells Cos.:					
Carpenters; Soft Floor Layers	12.23	.80	.60		.05
Millwrights	12.73	.80	.60		.05
Piledrivermen	12.43	.80	.60		.05

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Allen, DeKalb, Noble, Steuben, & Whiley Cos.:					
Carpenters; Soft Floor Layers	11.29	.70	6%		.02
Millwrights; Piledrivermen	11.69	.70	6%		.02
Bartholomew (Camp Atterbury), Boone, Fountain, Hamilton, Hancock, Hendricks, Johnson (excl. Edinburgh), Marion, Montgomery, Morgan (Excl. Twps. of Washington & Baker), Shelby (Camp Atterbury Area, Moral, & Van Buren Twps.), & Warren Cos.:					
Carpenters; Millwrights	13.15	.75	.85		.08
Bartholomew (Rem. of Co.) Johnson (Edinburgh), & Shelby (Rem. of Co.) Cos.:					
Carpenters; Soft Floor Layers	10.49	.55	.65		.03
Millwrights	10.99	.55	.65		.03
Piledrivermen; Burners; & Welders	10.74	.55	.65		.03
Benton, Clintron, Tippecanoe, & White Cos.:					
Carpenters; Soft Floor Layers	11.91	.60	.75		.02
Millwrights; Piledrivermen	12.26	.60	.75		.02
Blackford, Delaware, Jay, & Madison Cos.:					
Carpenters; Soft Floor Layers	11.63	.65	.50		.10
Millwrights	11.93	.65	.50		.10
Piledrivermen	11.83	.65	.50		.10
Monroe, Morgan (Twps. of Washington & Baker) Cos.:					
Carpenters; Soft Floor Layers	12.10	.72	.60		.01
Piledrivermen	12.35	.72	.60		.01
Millwrights	12.85	.77	.64		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:					
Adams, Allen, DeKalb, Noble, Steuben, & Whitley Cos.	10.85	.70	.80		.02
Bartholomew & Shelby Cos.	11.00				
Benton, Cass, Clinton, Fountain, Howard, Miami, Montgomery, Tippecanoe, Warren, & White Cos.	10.75	.60	.75		
Blackford, Delaware, Grant, Huntington, Jay, Wabash, & Wells Cos.	10.75	.60	.80		
Boone, Hamilton (S. ½ of Cos., N. to New Rte. Indiana Hwy. #32 incl. Noblesville), Hancock (Southern & Western part of Co. N. to but not incl. Town of Wilkinson, & E. to, but not incl. Town of Fortville), Hendricks, Johnson, Marion, Morgan, (N½), & Shelby (ending at Pleasant View) Cos.	11.16	.75	.75		.04
Fulton County	11.23	.85	.80		.04
Hamilton (N½), Hancock (E½), Madison, & Tipton Cos.	11.66	.65	.50		.08
ELECTRICIANS:					
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wells, & Whitley Cos.	13.05	.55	3%+.50		.06
Bartholomew, Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Montgomery, Morgan, & Shelby Cos.	13.70	4%	7%		½%
Benton, Cass, Fulton, Tippecanoe, & White Cos.	12.80	.55	3%+.50		½%
Blackford, Delaware, & Jay Cos.	12.80	.55	3%+.30		.2%
Clinton, Grant, Howard, Miami, Tipton, & Wabash Cos.	12.60	.55	3%+.50		.2%
Fountain & Warren Cos.	13.17	.50	3%+.50		.25%
Monroe Co.	12.85	.55	3%+.70		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS					
Adams, Allen, Blackford, DeKalb, Grant, Huntington, Jay, Noble, Steuben, Wabash, Wells, & Whitley Cos.	12.33	.745	.56	a+b	.035
Cass & Fulton Cos.	12.37	.745	.56	a+b	.035
Remaining Counties	12.79	.745	.56	a+b	.035
GLAZIERS:					
Adams, Allen, Blackford, Cass, DeKalb, Grant, Huntington, Jay, Miami, Noble, Steuben, Wabash, Wells, & Whitley Cos.	11.39		.25	.40+c	.04
Benton (E. of Rte. #41, S. to Gravel Hill), & White (NW of Rte. #39) Cos.	12.40	.70	.50		
Remaining Counties	14.19				
IRONWORKERS:					
Adams, Allen, Blackford, DeKalb, Delaware (Northeastern 1/3 of Co.), Grant (Excluding Southwestern portion), Huntington, Jay, Noble, Steuben, Wabash, Wells, & Whitley Cos.	12.35	1.00	1.70		.02
Bartholomew, Boone (excl. NW ¼), Clinton (E½), Delaware (S 2/3 of Co.), Grant (SW portion), Hamilton, Hancock, Hendricks, Howard, Johnson, Madison, Monroe, Morgan, Shelby, & Tipton (excl. NW ¼) Cos.	12.25	1.00	1.95		.05
Benton, Boone (NW ¼), Cass, Clinton (Rem. of Co.), Fountain, Miami, Montgomery, Tippecanoe, Tipton, (NW ¼) Warren & White Cos.	12.24	1.00	1.65		.02
Fulton County	11.95	1.00	1.98		.03
Marion county	12.10	1.00	1.95		.05
LATHERS:					
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wabash, Wells, & Whitley (except W. of #5) Cos.	10.94		.50		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bartholomew, Boone (SE ¼), Hamilton, Hendricks, Johnson, Madison, Marion, Monroe, Morgan, & Shelby Cos.	11.04	.61	.45		.04
Benton, Cass, Clinton, Howard, Montgomery, Tippecanoe, Warren, & White Cos.	11.29	.55	.35		.01
Blackford, Delaware, Grant, Hancock, & Jay Cos.	10.50		.55		.01
Fountain County	11.99	.45	.50		.01
MARBLE SETTERS: Terrazzo Workers; & Tile Setters:					
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wells, & Whitley Cos.:					
Marble Setters	12.21	.57	.50		.02
Terrazzo Workers & Tile Setters	10.80				
Bartholomew & Monroe Cos.	12.05	.50	.30		.02
Benton, Clinton, Fountain, Tippecanoe, Warren, & White Cos.	11.99	.48	.60		.02
Blackford, Delaware, Hamilton, Jay, Madison & Tipton Cos.:					
Tile Setters	11.60	.50	.75		.01
Boone, Hancock, Hendricks, Johnson, Marion, Montgomery, & Morgan Cos.:					
Marble Setters; Tile Setters	12.61	.50	.55		.04
Terrazzo Workers	12.35	.50	.55		.03
Cass & Fulton Cos.	10.49	1.00	.90	d	.02
Grant & Wabash Cos.	11.33	.85	.60		
Howard & Miami Cos.	11.08	.95	1.00		.05
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Adams, Bartholomew, Blackford, Boone, Clinton, Delaware, Fountain, Grant, Hamilton, Hancock, Hendricks, Howard, Huntington, Jay, Johnson,					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Madison, Marion, Monroe, Montgomery, Morgan, Tippecanoe, Tipton, Wabash, & Wells Cos.:					
Marble Setters' Finishers & Tile Setters Finishers	10.65				
Terrazzo Workers' Finishers	10.95				
PAINTERS:					
Adams, Allen, DeKalb, Grant, Huntington, Noble, Steuben, Wabash, Wells (N ½ to & Incl. Bluffton), & Whitley Cos.:					
Brush; Roller; Paperhangers; & Tapers	9.90	.60	.85		.12
Spray; Sandblasters; Steamcleaning & Pressure Water Blasting	10.90	.60	.85		.12
Bartholomew County:					
Brush; Drywall Taping & Finishing; & Rollers	9.45		.50		
Sandblasting; Spray; Swing Stage	10.45		.50		
Benton, Clinton, Fountain, Montgomery, Tippecanoe & Warren Cos.:					
Brush; Drywall Tapers & Finishers; Roller; Wall Covering Applicators	11.25	.70			
Structural Steel	11.50	.70			
Sandblasting	12.25	.70			
Spray	14.52	.70			
Blackford, Cass, Delaware, Fulton, Howard, Jay, Madison, Miami, Tipton, & Wells (to the So. City Limits of Bluffton) Cos.:					
Brush; Taping	10.80		.80		
Pressure Cleaning Equipment; Sandblasting; Spray	11.80		.80		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Boone, Hamilton, Hancock Hendricks, Johnson, Marion, Morgan (N ½), & Shelby Cos.:					
Brush; Rollers; Drywall Tapers & Finishers	11.24	.78	.48		
Sandblasters; Spray	12.24	.78	.48		
Monroe, Morgan (To The Northern limits of Martinsville) Cos.:					
Brush; Drywall; Vinyl; Paperhanging; & Roller	8.90			.30	
Structural Steel; Stage & Hazardous Work; Scaffold	9.65		.30		
Sandblasting; Spray & Epoxy Brush	9.90			.30	
Spray Epoxy	10.90			.30	
White Co.:					
Brush	11.60	.79	.60		.05
Sandblasting; Spray	12.35	.79	.60		.05
Drywall Taping	12.65	.79	.60		.05
Vinyl Paperhanging	11.85	.79	.60		.05
PLASTERERS:					
Adams, Allen, DeKalb, Noble, Steuben, & Whitley Cos.	11.23	.60	.80		
Bartholomew & Shelby Cos.	11.00				
Benton (Eastern 2/3 West to & incl. (Eastern 2/3 West to & incl. Boswell, Earl Parke, & Raub), Cass, Clinton, Fountain (W. to & Incl. Attica, in the North & West to, but not incl. Veedersburg in the South), Howard, Miami, Montgomery, Tippecanoe, Warren (E ½ West to but not Incl. Judyville, So. to & Incl. Kramer), & White Cos.	11.35	.70			.02
Blackford, Delaware, Grant, Huntington, Jay, Wabash, & Wells Cos.	11.45	.75			.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Boone, Hamilton (So. ½ No. to New Indiana Rte. #32), Hancock (S. & Western part No. to State Rd. #234 & E. to Co. Rd. #300 - W), Hendricks, Johnson, Marion, Morgan (N½), & Shelby Cos.	11.83	.80		.01	
Monroe County	12.05	.50	.30		.02
Hamilton (No. ½), Hancock (No. part), Madison, & Tipton Cos.	10.78	.85	.50		.01
PLUMBERS; Steamfitters:					
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wells, & Whitley Cos.	13.75	.55	.90		.07
Bartholomew (exclu. Camp Atterbury) Co.	13.76	.60	.60		.05
Bartholomew (Camp Atterbury), Boone, Hamilton, Hancock, Hendricks, Howard, Johnson, Marion, Miami, (So. of Rte #218), Morgan, Shelby, & Tipton Cos.	13.50	.60	1.10		.04
Benton, Clinton, Fountain, Montgomery, Tippecanoe Warren, & White Cos.	13.85	.60	1.00		.10
Blackford, Grant, & Wabash Cos.	13.50	.60	.95		.15
Cass, Fulton, Miami (No. of Hwy. #218), Cos.	13.58	.75	.95		.10
Delaware, Jay, Madison Cos.	13.60	.60	.95	e	.15
Monroe County	13.60	.60	1.00		.15
ROOFERS:					
Adams, Allen, DeKalb, Noble, Steuben, Wells, & Whitley Cos.	10.90		.10		
Bartholomew, Boone, Hancock, Hendricks, Johnson, Marion, Monroe, Morgan, & Shelby Cos.:					
Composition & Waterproof	12.50	.65	.50		
Slate, Tile, Asbestos & Precast Slab	12.75	.65	.50		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Benton, Cass, Clinton, Fountain, Montgomery, Tippecanoe, Warren & White Cos.:					
Composition, Damp & Waterproof	12.20	.60	.38		
Slate, Tile, & Asbestos	12.45	.60	.38		
Blackford, Delaware, Grant, Hamilton, Howard, Huntington, Jay, Madison, Miami, Tipton, & Wabash Cos.:					
Slate, Tile, & Asbestos; Composition Damp & Wasterproof	11.25	.55	.30		
Coal Tar Pitch	12.00	.55	.30		
Fulton County:					
Composition, Damp & Waterproof	11.75	.55	.50		.03
Slate, Tile & Asbestos	12.25	.55	.50		.03
SHEET METAL WORKERS:					
Adams, Allen, Blackford, Cass, DeKalb, Grant, Howard, Huntington, Jay, Miami, Noble, Steuben, Wabash, Wells & Whitley Cos.	13.06	.50+f	.60		.12
Bartholomew, Boone, Delaware, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Monroe, Morgan, Shelby, & Tipton Cos.	12.93	.65+f	.80		.12
Benton, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Cos.	12.58	.70+f	.55		.07
Fulton County	12.88	.75	.615		.07
SPRINKLER FITTERS	13.33	.75	1.05		.08

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Benton, Cass, Clinton Fountain, Howard, Miami, Montgomery, Tippecanoe, Tipton, Wabash, Warren, & White Cos.:					
Pickups when Hauling - Equipment, Etc.	8.23	20.00g	34.00g	h+i	
Tenders; Greaser; Tiremen	8.33	20.00g	34.00g	h+i	
Single Axle-Straight Trucks	8.38	20.00g	34.00g	h+i	
Tandem Axle Dogleg Straight Trucks	8.38	20.00g	34.00g	h+i	
Bituminous Distributors	8.53	20.00g	34.00g	h+i	
Tri-Axles; Semis; Mechanics	8.68	20.00g	34.00g	h+i	

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PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Indpendence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. 7 Paid Holidays: A through F, & Day after Thanksgiving Day
b. Employer Contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years, and 6% for employee who has worked in business less than 5 years.
c. 6 Paid Holidays: A through F, provided such employees work the last scheduled day prior to and the next scheduled work day after the holiday unless permission for not working on such days is granted by the employer.
d. 6 Paid Holidays: A through F
e. 2 Paid Holidays: C & D
f. 3% of gross earnings to SASMI
g. Per week per employee
h. One week's paid vacation after one year's employment; two weeks' paid vacation after three years' employment; three weeks' paid vacation after ten years' employment
i. 6 Paid Holidays: A through F

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LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Benton, Boone, Cass, Clinton, Fountain, Howard, Miami, Montgomery, Tippecanoe, Tipton, & White Cos.:					
GROUP I	9.15	.85	.75		.09
GROUP II	9.35	.85	.75		.09
GROUP III	9.45	.85	.75		.09
GROUP IV	10.15	.85	.75		.09
Bartholomew, Fountain, Hendricks, Johnson, Monroe, Morgan, & Warren Cos.:					
GROUP I	9.30	.85	.75		.09
GROUP II	9.50	.85	.75		.09
GROUP III	9.60	.85	.75		.09
GROUP IV	10.30	.85	.75		.09
Blackford, Delaware, Grant, Hamilton, Hancock, Jay, & Madison Cos.:					
GROUP I	8.90	.85	.75		.09
GROUP II	9.10	.85	.75		.09
GROUP III	9.20	.85	.75		.09
GROUP IV	9.90	.85	.75		.09
Marion & Shelby Cos.:					
GROUP I	9.50	.85	.75		.09
GROUP II	9.70	.85	.75		.09
GROUP III	9.80	.85	.75		.09
GROUP IV	10.50	.85	.75		.09

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GROUP I - Building & Construction Laborers; Scaffold Builders (other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; Civil Engineer Tenders & Surveyor Tenders; Rodmen & Chainmen; Window Washers & Cleaners; Roofer's Tenders; Railroad Workers; Masonry Wall Washers (interior & exterior); Cement Finisher Tenders; Carpenter Tenders; Tenders of all other Crafts not Listed; Mason Tenders for Areas I, IA, IB; All Portable Water Pumps with discharge up to 3 inches.

GROUP II - Waterproofing; Handling of Creosote Lumber or Like Treated Material (excluding railroad material); Asphalt Rakers & Lutemen; Kettlemen, Air Tool Operators, Vibrator, Chipping Hammer Operators and All Pneumatic Tool Operators; Earth Compactors; Jackmen & Sheetmen Working Ditches Deeper than 6 ft. in Depth; Laborers Working Ditches 6 ft. in depth or deeper; Assembly of Unicrete Pump; Chain Saw Operators; Tile Layers (sewer or field) & Sewer Pipe Layers (metallic or non-metallic); Motor Driven Wheelbarrows & Concrete Buggies; Hyster Operators; Pump Crete Assemblers; Conveyor Assemblers; Core Drill Operators; Cement, Lime or Silica Clay Handlers (bulk or bag); Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine & Winch Operators; Water Main & Cable Ducking (metallic & non-metallic)

GROUP III - Plasterers' Tenders; Mason Tenders, Except for Areas I, IA, IB; Mortar Mixers; Welders (acetylene or electric); Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders when Working for Plasterers; Scaffold Builders when Working for Masons (except in Areas, I, IA, IB)

GROUP IV - Dynamite Men; Drillers - Air Track or Wagon Drilling for Explosives

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LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wabash, Wells, & Whitley, Counties					
GROUP I	8.95	.70	.70		.09
GROUP II	8.75	.70	.70		.09
GROUP III	8.85	.70	.70		.09
GROUP IV	9.55	.70	.70		.09

GROUP I - Building & Construction Laborers; Scaffold Builders (other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; Civil Engineer Tenders & Surveyor Tenders; Rodmen & Chainmen; Window Washers & Cleaners; Roofer's Tenders; Railroad Workers; Masonry Wall Washers (interior & exterior); Cement Finisher Tenders; Carpenter Tenders; Tenders of All other Crafts not Listed; Mason Tenders; All Portable Water Pumps With Discharge Up to 3 Inches

GROUP II - Waterproofing; Handling of Creosote Lumber or Like Treated Material (excluding railroad material); Asphalt Rakers & Lutemen; Kettlemen; Air Tool Operators; Vibrators; Chipping Hammer Operators and All Pneaumatic Tool Operators; Earth Compactors; Jackmen & Sheetmen Working Ditches Deeper than 6 ft. in Depth; Laborers Working Ditches 6 ft. in Depth or Deeper; Assembly of Unicrete Pump; Chain Saw & Demolition Saw Operators; Tile Layers (sewer or field) & Sewer Pipe Layers (metallic or non-metallic); Motor Driven Wheelbarrows & Concrete Buggies; Hyster Operators; Pump Crete Assemblers; Conveyor Assemblers; Core Drill Operators; Cement, Lime or Silica Clay Handlers (bulk or bag); Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine & Winch Operators; Water Main & Cable Ducking (metallic non-metallic); Screed Man or Screw Op. on Asphalt Paver

GROUP III - Plasterers' Tenders; Mortar Mixers; Welders (acetylene or electric); Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders when Working for Plasterers

GROUP IV - Dynamite Men; Drillers - Air Track or Wagon Drilling for Explosives

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POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams, Allen, Benton, Blackford, Cass, Clinton, DeKalb, Delaware, Grant, Hamilton, Hancock, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Wells, White, & Whitley Cos.					
GROUP 1	12.50	.75	.65		.10
GROUP 2	11.55	.75	.65		.10
GROUP 3	9.45	.75	.65		.10
GROUP 4	8.35	.75	.65		.10

CLASSIFICATIONS

GROUP 1 - Air Compressor (pressurizing shafts, tunnels and divers); Air Tugger; Auto Patrol; Backfiller; Backhoe; Boom Cat; Boring Machine; Bulldozer; Caisson Drilling Machine; Cherry Picker; Compactor (w/dozer blade) Concrete Plant; Concrete Pump; Crane w/all attachments; Crane-Electric Overhead; Derrick; Ditching Machine (18" and over); Dredge; Elevator (when hoisting material or tool); Forklift (machinery); Formless Paver; Generator (power for welders or compressors); Gradall; Helicopter; Helicopter Winch Operator; Highlift-Front End Loader; Hoist; Locomotive; Machine (C.M.I. or similar tower crane); Mechanic on Job Site; Mucking Machine; Panel Board, Concrete Plant; Piledriver; Push Cat; Scoop and Tractor; Scraper-rubber-tired; Spreader-Tractor Mounted; Straddle Carrier-Ross Type; Sub Base Finish; Tractor w/Backhoe (over ½ yd.); Welder

GROUP 2 - A- Frame Truck; Batcher Plant (automatic dry batch); Bending Machine-Power Driven; Bituminous Mixer; Bituminous Paver; Bituminous Plant Engineer; Boatman; Bullfloat; Compactor or Tamper-Self-propelled; Concrete Mixer (21 cu. ft. or over); Concrete Spreader-Power Driven; Dinkey Engine; Ditching Machine (less than 18"); Drilling Machine Finish Machine and Bullfloat; Finishing Machine; Piledriving and Boilers; Forklift-Masonry and Material; Gunnite Machine; Head Greaser; Mesh Depresser-Mesh Placer; P.C.C.-Concrete Belt Placer; Roller-Asphalt Stone and Sub-Base; Sheepstone Roller Self-Propelled; Spreader or Base Paver-Self-Propelled; Subgrader; Throttle Valve w/air Compressor or Boiler; Tractor w/Backhoe (½ yard and under); Tractor-High Lift-Farm-Type; Tractor-Industrial Type; Tractor w/Winch; Well Points; Winch Truck

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Air Compressor (210 cu. ft. and over); Bituminous Distributor; Chair Cart; Concrete Curing Machine; Concrete Saw; Dope Pot-Power Agitated; Flexplane; Form Grader; Hydrohammer; Jacks-Hydraulic-Power Driven; Minor Equipment Operator; Paving Joint Machine; Post Hole Digger; Roller-Earth; Throttle Valve; Track Jack-Power Driven; Tractor-Farm Type; Truck Crane Driver.

GROUP 4 - Air Compressor (less than 210 cu. ft.); Concrete Mixer (under 21 cu. ft.); Conveyor; Generator; Mechanical Heater; Oiler; Power Broom Pump; Tenders; & Welding Machines

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POWER EQUIPMENT OPERATORS:
Boone, Fountain, Henricks, Monroe, Montgomery, Morgan, & Warren Cos.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	13.15	.55	.75		.08
GROUP II	13.05	.55	.75		.08
GROUP III	12.85	.55	.75		.08
GROUP IV	8.00	.55	.75		.08

CLASSIFICATIONS

GROUP I - Master Mechanics

GROUP II - Utility Operator

GROUP III - Power Cranes; Draglines; Derricks; Electric Overhead Cranes; Shovels; Gradall; Mechanics; Repair and Maintenance of all Equipment Tractor Highlift; Fork Lifts; Tournadozer; Mixer over 14S Capacity: Tournamixer; Two Drum Machine or Two Cage Hoists; Cableways; Tower Machines; Motor Patrol; Boom Tractor; Boom or Winch Truck; Truck Crane; Tournapull; Tractor Operating Scoops; Bulldozer; Push Tractor; Finishing Machine on Asphalt; Large Rollers & Rollers on Asphalt; Gravel; Macadam and Brick Surface; Ross Carrier or Similar Machine; Gravel Processing Machine; Asphalt Plant Engineer or Pug Mill; Two Air Compressors; Hetherington Paver Operator; Farm Tractor with Half Yard Bucket and/or Back Hoe Attachment; Trench Machines Cutting 24"; Dredging Equipment; Central Mix Plant Engineer; CMI or Similar Type Machine; Concrete Spreader; Cherry Picker; Standard or Dinkey Locomotives; Scoopmobiles; Euclid Loader; Soil Cement Machines; Back Filler; Elevating Machine; Power Blade; Asphalt Plant Engineer; Well Drilling Machines; Paint Machine; Pipe Cleaning Machines; Pipe Wrapping Machine; Pipe Bending Machine; Apsco Paver; Boring Machine; Tractor Without; Head Equipment Greasers; Barber Green Loaders; Formless Paver; Well Point System Hydra Ax; Resco Concrete Saw; Marine Scoopes; Brush Mulcher; Brush Burner; Mesh Placer; Tree Mover; Helicopter Crew (3); Pile Driver Skid or Crawler; Stump Remover; Root Rake; Tug Boat Operator; Refrigerating Machine Freezing Operator Chair Cart-Self Propelled; Hydra Seeder; Straw Blower; Concrete Mixers with Skip; all one Drum Hoists with Tower or Boom; Dredge Engineer; Dredge Operator; Rock Spreader; truck or Skid Mounted Tower Crane; Engine or Rock Crusher Plant; Boiler Operator; Concrete Plant Engineer; Loaders; Hydra Crane Caissons; Shaft or any Similar Type Drilling Machine; Concrete Curb Machine - Self Propelled Winch or Hydraulic Boom Truck

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP IV - Mixers 14S Capacity or less; Trench Machine Cutting 24" and Under; Farm Tractor with less than Half Yard Bucket and other Attachments Except Back Hoe; Truck Crane Oiler; Power Subgrader; Bull Float; Form Grader; Finishing Machine; Pavement Breaker; Rock Crushers; One Drum Machine; One Air Compressor; Concrete Pump; Gunite Machine; Air Tuggers; Truck Crane Drivers; House Elevators when used for Hoisting Material; Two to Four Generators or Welding Machine; Mechanized Heaters Irrespective of Motor Power when Used for, Temporary Heat; Small Rollers on Earth; Engine Tenders; Firemen; Wagon Drill; Flexplane; Conveyor Two to Four Water Pumps; Siphon and Pulsometer; Distributor Operator on Trucks; Tampers; Power Broom; Post Hole Digger; Self-propelled Concrete Saw; Striping Machine (Motor Driven); Form Tamper; Seaman Tiller; Bulk Cement Plant Equipment Greaser; Track Jack; Mud Jack; Concrete Buggies Motor Driven Oilers; Barrel Type Mixer; One Welding Machine or One Water Pump; Air Valves or Steam Valves from Plant; Concrete Mixers without Skip; Curing Machine; Concrete & Blacktop Curb Machine; Deck Hands

Cranes with Booms from 149 ft. to 199 ft. Including Jib Receive Additional $.75 Per Hour
Cranes with Boom over 199 ft. Including Jib Receive Additional $1.25 Per Hour

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TRUCK DRIVERS Bartholomew, Blackford, Delaware, Grant, Hamilton, Hancock, Jay, Madison, & Monroe Cos.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.65	35.05a	23.00a	b&c	
GROUP 2	9.70	35.50a	23.00a	b&c	
GROUP 3	9.75	35.50a	23.00a	b&c	
GROUP 4	9.80	35.50a	23.00a	b&c	
GROUP 5	9.85	35.50a	23.00a	b&c	
GROUP 6	9.90	35.50a	23.00a	b&c	
GROUP 7	10.00	35.50a	23.00a	b&c	
GROUP 8	10.05	35.50a	23.00a	b&c	
GROUP 9	10.10	35.50a	23.00a	b&c	
GROUP 10	10.15	35.50a	23.00a	b&c	
GROUP 11	10.30	35.50a	23.00a	b&c	

GROUP 1 - Air Compressors and Welding Machines, Incl. those Pulled by Cars, Pickup Trucks, Tractors, & Fork Lifts; Dumpsters; & Lowboy Tenders
GROUP 2 - Mixers 2 yds.
GROUP 3 - Mechanic Tenders and Greasers
GROUP 4 - Batch Trucks Wet or Dry 3 Batches or Under
GROUP 5 - Mixers 3 yds.; Oil Distributors; Tandem Axles, Incl. Dog Legs; & Winch Trucks
GROUP 6 - Batch Truck Wet or Dry or Dry Over 3 Batches; Pavement Breakers; & Single Axle Semi Trucks
GROUP 7 - Mechanics; Mixers 4 yds.; Tandem-Axle Semi- Trucks; & Tack-o-Trucks, Euclids, Tournapull when Pulling Other than Self-Loading Equipment Up to and Incl. 10 yds.
GROUP 8 - Tri-Axles
GROUP 9 - Low Boys; Tandem - Tandem Axle Semi-Trucks
GROUP 10 - Mixers Above 4 Yds.; & Trac-o-Trucks, Euclids, Tournapulls When Pulling Other than Self-Loading Equipment 11 yds. to and Incl. 16 yds.
GROUP 11 - Helicopter Pilot; Trac-o-Trucks, Euclids, Tournapulls when Pulling Other Shan self-Loading Equipment over 16 yds.

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FOOTNOTES:

a. Per week per employee

b. 1 week's paid vacation after 1 year's service; 2 weeks' paid vacation after 3 years' service; & 3 weeks' paid vacation after 10 years' service.

c. 7 Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; & Christmas Day

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: INDIANA COUNTIES: *SEE BELOW
DECISION NUMBER: IN80-2021 DATE: Date of Publication
Supersedes Decision No. IN79-2003 dated January 26, 1979 in 44 FR 5614
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories)

BROWN, CLARK, CRAWFORD, DEARBORN, DECATUR, FAYETTE, FLOYD, FRANKLIN, HARRISON, HENRY, JACKSON, JEFFERSON, JENNINGS, LAWRENCE, OHIO, ORANGE, RANDOLPH, RIPLEY, RUSH, SCOTT, SWITZERLAND, UNION, WASHINGTON, & WAYNE, COS.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Brown, Decatur, Henry, & Rush Cos.	$13.65	.50	1.20		
Dearborn, Fayette, Franklin, Ohio, Ripley, Switzerland, & Union Cos.	14.01	.75	1.25		.02
Randolph and Wayne Cos.	12.87	.55	1.50		.02
Remaining Cos.	12.85	.60	1.00		
BOILERMAKERS:					
Brown, Crawford, Decatur, Fayette, Franklin, Henry, Jackson, Jennings, Lawrence, Ohio, Orange, Randolph, Ripley, Rush, Union, Washington, & Wayne Cos.	14.25	1.275	1.00		.03
Remaining Cos.	11.70	1.275	1.20	1.50	.04
BRICKLAYERS; Caulkers; Cleaners; Pointers; & Stonemasons:					
Brown, Jackson, & Jennings	12.05	.50	.30		.02
Clark, Floyd, & Harrison Cos.	11.44	.50	.40		.01
Crawford Co.	11.78	1.00	.75		
Dearborn, Decatur & Ripley Cos.	11.80		.30		
Fayette, Franklin, Rush, Union & Wayne Cos.	11.76	.80	.55		
Henry & Randolph Cos.	11.85	.50	.75		.01
Jefferson, Ohio, Scott & Switzerland Cos.	10.75				
Lawrence, Orange & Washington Cos.	12.79				
CARPENTERS; Millwrights; Piledrivermen & Soft Floor Layers:					
Brown (Twp. of Hamblin), Jackson, Jefferson, Jennings, Rush (except Carthage Twp.) & Scott Cos.					
Carpenters; Soft Floor Layers	10.49	.55	.65		.03
Millwrights	10.99	.55	.65		.03
Piledrivermen; Welders; Burners	10.74	.55	.65		.03

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Brown (excl. Hamblin Twp.) Co.:					
Carpenters; Soft Floor Layers	12.10	.72	.60		.01
Millwrights	12.85	.77	.64		.01
Piledrivermen	12.35	.72	.60		.01
Clark, Floyd, Harrison, & Washington Cos.:					
Carpenters; Soft Floor Layers	10.75	.55	.55		.05
Piledrivermen	11.00	.55	.55		.05
Millwrights	12.75	.55	.85		.05
Crawford Co.:					
Carpenters	12.27	.70	1.00		
Piledrivermen; Welders & Burners	12.52	.70	1.00		
Millwrights	12.29	.60	.90		
Dearborn, Decatur, Franklin, Ohio, Ripley, & Switzerland Cos.:					
Carpenters; Soft Floor Layers	10.54	.55	.65		.03
Millwrights	11.04	.55	.65		.03
Piledrivermen; Welders; Burners	10.79	.55	.65		.03
Fayette, Henry, Randolph, Rush (Carthage), Union, & Wayne Cos.:					
Carpenters; Soft Floor Layers	11.63	.65	.50		.10
Millwrights	11.93	.65	.50		.10
Piledrivermen	11.83	.65	.50		.10
Lawrence & Orange Cos.:					
Carpenters; Soft Floor Layers	11.50	.70	.77		.02
Millwrights	12.10	.70	.77		.02
Piledrivermen	11.90	.70	.77		.02
CEMENT MASONS; Plasterers: Brown, Jackson, Jefferson, Jennings, Lawrence, Orange, Scott & Washington Cos.	11.00				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Clark, Floyd & Harrison Cos.:					
Cement Masons	9.88	1.00	.70		.04
Plasterers	11.85				.02
Crawford Co.:					
Cement Masons	12.30	.85	.65		
Decatur, Fayette, Franklin (Northern part to and inclu. Brookville), Rush, Union, & Wayne Cos.:					
Cement Masons	10.35		1.80		
Plasterers	11.55	.80	.50		.03
Henry Co.:					
Cement Masons	11.66	.65	.50		.08
Plasterers	10.78	.85	.50		.01
Randolph Co.:					
Cement Masons	10.75	.60	.80		
Plasterers	11.45	.75			.01
ELECTRICIANS:					
Brown Co.	12.85	.55	3%+.70		.01
Clark, Floyd, Harrison, Jackson, Jefferson Scott & Washington Cos.	14.20	.60	3%+.85		½%
Crawford, Lawrence, & Orange Cos.	13.85	.50	3%		½%
Dearborn, Ohio & Switzerland Cos.:					
Up to & incl. 18. mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	13.70	.60	3%+.80		½%
Over 18 mi. radius up to & incl. 21 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	14.00	.70	3%+.80		½%
Over 21 mi. radius up to & incl. 25 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	14.10	.70	3%+.80		½%
Over 25 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	14.25	.70	3%+.80		½%
Decatur, Jennings, Ripley & Rush Cos.	13.70	4%	7%		½%
Fayette, Franklin, Henry, Randolph, Union & Wayne Cos.	12.80	.55	3%+.30		.2%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
Brown, Decatur, Henry, & Rush Cos.	12.79	.745	.56	a+b	.035
Clark, Crawford, Floyd, Harrison, Jefferson, Jennings, Lawrence, Orange, Scott, & Washington Cos.	12.57	.745	.56	a+b	.035
Dearborn, Fayette, Franklin, Ohio, Ripley, Switzerland, & Wayne Cos.	13.02	.745	.56	a+b	.035
Randolph Co.	12.33	.745	.56	a+b	.035
GLAZIERS:					
Brown, Decatur (NW of a line from the NE Co. corner thru Mechanicsburg to the S. Co. line); Fayette (N. of 44 to 121 and W. of 121), Franklin (N. of a line from Buena Vista to Cornersville), Henry, Jackson (N. of a line from a point on the E. Co. line 8 mi. S. of the N. co. line to Brownstown and from there N. of 50), Jennings (NW of a line from a point on the N. Co. line 4 mi. E. of the E. Co. line to N. Vernon and from N. Vernon N. of 50 to the W. Co. line), Lawrence (N. of 50 to Bedford and N. of Bedford to Springville to the W. Co. line), Randolph (W. of a straight line drawn from N. to S. thru Harrisville), Rush, Union (N. of 44 and W. of Kitchell), & Wayne (W. of a straight line N. to S. thru Chester) Cos.	14.19				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Crawford (Rem. of Co.), & Orange (SW corner) Cos.	10.905	.48	.50	.25	
Dearborn, Decatur (Rem. of Co.), Fayette (Rem. of Co.), Franklin (Rem. of Co.), Jefferson (E½), Jennings (Rem. of Co.), Ohio, Randolph (Rem. of Co.), Ripley, Switzerland, Union (Rem. of Co.), & Wayne (Rem.of Co.) Cos.	14.10		.60		.01
IRONWORKERS:					
Brown, Decatur (W½), Fayette (W½), Franklin (NW Tip), Henry, Jackson (N part inclu. Freetown), Jennings (NW Corner), Lawrence (N part exclu. Oolitic), Randolph (SW Tip), & Rush Cos.	12.25	1.00	1.95		.05
Clark, Crawford, Floyd, Harrison, Jackson (Rem. of Co.), Jefferson (W 2/3), Jennings (S 2/3), Lawrence (S 2/3), Orange, Scott, Switzerland (SW Tip), & Washington Cos.	12.00	1.40	1.45		.06
Dearborn, Decatur (Rem. of Co.), Fayette (SE 2/3), Franklin (Rem. of Co.), Jefferson (NE Tip), Jennings (NE 1/3), Ohio, Ripley, Switzerland (Rem. of Co.), & Union (S 1/3) Cos.:					
Ornamental; Structural	13.08	1.00	1.45		.03
Reinforcing	12.18	1.00	2.25		.02
Fayette (Rem. of Co.), Randolph (S.part including Union city but exclu. Winchester), Union (N 2/3) & Wayne Cos.:					
Within 15 mi. Radius of Dayton, Ohio	12.36	1.00	1.45		.06
Beyond 15 mi. radius of Dayton, Ohio	12.51	.90	1.45		.06

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Randolph (N part of Co. excluding Union City but includ. Winchester) Co.)	12.35	1.00	1.70		.02
LATHERS:					
Brown, Dearborn (N½), Decatur, Fayette (S 2/3), Franklin, Jackson (N. part includ. Freetown), Jennings (N. part exclu. N. Vernon & Vernon), Lawrence (N 2/3), Ripley (N½), Rush, Union (except NW Tip) Cos.	11.04	.61	.45		.04
Clark, Crawford, Dearborn (S½), Floyd, Harrison, Henry (SW portion), Jackson (S. part exclu. Freetown), Jefferson, Jennings (S. part inclu. N. Vernon & Vernon), Lawrence (S 1/3), Ohio, Orange, Ripley (S½), Scott, Switzerland, Washington Cos.	11.79		.20		.01
Fayette (N 1/3), Henry (Rem.of Co.), Randolph, Union (NW Tip), & Wayne Cos.	10.50		.55		.01
MARBLE SETTERS: TERRAZZO WORKERS; & Tile Setters:					
Brown, Jackson, Jennings Cos.	12.05	.50	.30		.02
Clark, Floyd, & Harrison	11.10	.50	.40		
Crawford Co.	11.10	.75	.75		
Fayette, Franklin, Rush, Union, & Wayne Cos.:					
Tile Setters	11.76	.80	.55		
Henry & Randolph Cos.:					
Tile Setters	11.60	.50	.75		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Brown, Fayette, Franklin, Henry, Jackson, Jennings, Randolph, Rush, Union & Wayne Cos.:					
Marble Setters Finishers & Tile Setters Finishers	10.65				
Terrazzo Workers Finishers	10.95				
Clark, Crawford, Floyd, & Harrison Cos.	9.65				
PAINTERS:					
Clark, Crawford, Floyd, Harrison, Jefferson, Scott & Washington Cos.:					
Within 35 mi Radius of Jefferson Co., Kentucky Court House:					
Brush; Drywall Tapers & Finishers; Paperhangers; & Rollers	9.83	.35	.20		.03
Special	10.18	.35	.20		.03
Spray	10.28	.35	.20		.03
Beyond 35 mi radius of Jefferson Co., Kentucky Court House:					
Brush; Drywall Tapers & Finishers; Paperhangers; & Rollers	10.18	.35	.20		.03
Special	10.53	.35	.20		.03
Spray	10.63	.35	.20		.03
Dearborn, Ohio, Ripley & Switzerland Cos.:					
Brush; Roller; Wall-Washing; Drywall Taping & Finishing; Wallpaper & Vinyl Hanging; Floor Sanding; Seamless Flooring & Hopper Tending; & Steamcleaning	11.50				
Spray; Epoxy	12.00				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decatur, Jackson & Jennings Cos.:					
Brush; Drywall Taping & Finishing; & Roller	9.45		.50		
Sandblast & Spray	10.45		.50		
Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Cos.:					
Brush	9.35				
Sandblasting & Spray	10.35				
Scaffold over 30 ft., Structural Steel; Stage & Spray Tenders	9.60				
Lawrence & Orange Cos.:					
Brush; Drywall; Roller; & Structural Steel	9.00				
Sandblasting; Spray	10.00				
PLUMBERS & STEAMFITTERS:					
Brown (except Camp Atterbury), Jackson, Lawrence, Orange & Washington Cos.	13.60	.60	1.00		.15
Brown (Camp Atterbury) Cos.	13.50	.60	1.10		.04
Clark, Crawford, Floyd, Harrison, Jefferson, Scott, & Switzerland Cos.	14.75	.50	1.10	c	.05
Dearborn, Ohio & Ripley Cos.:					
Plumbers; Gas Fitters	13.82	1.05	1.20		.07
Steamfitters; Pipefitters	13.78	1.045	1.60		.08
Decatur & Jennings Cos.	13.76	.60	.60		.05
Fayette, Franklin, Henry, Randolph, Rush, Union, & Wayne Cos.	13.60	.60	.95	d	.15
ROOFERS:					
Brown, Decatur, Fayette, Franklin, Jackson, Jennings, Lawrence, Rush, Union & Wayne Cos.:					
Composition & Waterproof	12.50	.65	.50		
Slate, Tile, Asbestos & Precast Slab	12.75	.65	.50		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Clark, Floyd, Harrison, Jefferson, Scott, Switzerland & Washington Cos.:					
Roofers	8.80	.65	.45		
Slate, Tile, & Precast Concrete Slabs	9.20	.65	.45		
Crawford & Orange Cos.:					
Composition & Waterproofers	12.28	.75	.70		
Gypsum Plant; Slate; Tile; & Concrete Slab	12.53	.75	.70		
Dearborn, Ohio & Ripley Cos.:					
Roofers	14.32		.85		.01
Pitch	15.32		.85		.01
Henry & Randolph Cos.:					
Composition; Damp & Waterproof; Slate, Tile and Asbestos	11.25	.55	.30		
Coal Tar Pitch	12.00	.55	.30		
SHEET METAL WORKERS:					
Clark, Floyd, & Harrison Cos.	12.88	1.10	1.47		.16
Crawford, Jefferson, Scott & Switzerland Cos.	14.13	1.10	1.47		.16
Dearborn & Ohio Counties	13.835	1.06	.85		.06
Randolph & Wayne Cos.	12.28	.95+e	1.15		
Remaining Cos.	12.93	.65+e	.80		.12
SPRINKLER FITTERS	13.33	.75	1.05		.08

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Seven paid holidays: A thru F and Day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 yrs.; Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. One Paid Holiday: Christmas Eve Day
d. Two Paid Holidays: C&D
e. 3% of Gross Earnings to SASMI

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LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Fayette, Henry, Randolph, Rush, Union & Wayne Cos.:					
GROUP I	8.90	.85	.75		.09
GROUP II	9.10	.85	.75		.09
GROUP III	9.20	.85	.75		.09
GROUP IV	9.90	.85	.75		.09
Remaining Cos.:					
GROUP I	9.30	.85	.75		.09
GROUP II	9.50	.85	.75		.09
GROUP III	9.60	.85	.75		.09
GROUP IV	10.30	.85	.75		.09

GROUP I: - Building & Construction Laborers; Scaffold Builders (Other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; Civil Engineer Tenders & Surveyor Tenders; Rodmen & Chainmen; Window Washers & Cleaners; Roofer's Tenders; Railroad Workers; Masonry Wall Washers (interior & exterior); Cement Finisher Tenders; Tenders of all other Crafts not listed; All Portable Water Pumps With Discharge Up to 3 inches

GROUP II - Waterproofing; Handling of Creosote Lumber or Like Treated Treated Material (excluding railroad material); Asphalt Rakers & Lutemen; Kettlemen; Air Tool Operators, Vibrators, Chipping Hammer Operators and All Pneumatic Tool Operators; Earth Compactors; Jackmen & Sheetmen Working Ditches Deeper than 6 ft. in Depth; Laborers Working Ditches 6 ft. in Depth or Deeper; Assembly of Unicrete Pump; Chain Saw Operators; Tile Layers (sewer or field) & Sewer Pipe Layers (metallic or non-metallic); Motor Driven Wheelbarrows & Concrete Buggies; Hyster Operators; Pump Crete Assemblers; Conveyor Assemblers; Core Drill Operators; Cement, Lime or Silica Clay Handlers (bulk or bag); Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine & Winch Operators; Water Main & Cable Ducking (metallic & non-metallic)

GROUP III - Plasterers' Tenders; Mason Tenders; Mortar Mixers; Welders (acetylene or electric); Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders when Working for Plasterers; Scaffold Builders when Working for Masons

GROUP IV - Dynamite Men; Drillers - Air Track or Wagon Drilling for Explosives

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POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Fayette, Henry, Randolph, Rush, Union, & Wayne Cos.					
GROUP 1	12.50	.75	.65		.10
GROUP 2	11.55	.75	.65		.10
GROUP 3	9.45	.75	.65		.10
GROUP 4	8.35	.75	.65		.10

GROUP 1 - Air Compressor (pressurizing shafts, tunnels and drivers); Air Tugger; Auto Patrol; Backfiller; Backhoe; Boom Cat; Boring Machine; Bulldozer; Caisson Drilling Machine; Cherry Picker; Compactor (w/dozer blade); Concrete Plant; Concrete Pump; Crane w/all Attachments; Crane-Electric Overhead; Derrick; Ditching Machine (18" and over); Dredge; Elevator (when hoisting material or tool); Forklift (marchinery); Formless Paver; Generator (power for welders or compressors); Gradall; Helicopter; Helicopter Winch Operator; Highlift-Front End Loader; Hoist; Locomotive; Mucking Machine; Panel Board; Concrete Plant; Piledriver; Push Cat; Scoop and Tractor; Scraper-Rubber-Tired; Spreader-Tractor Mounted; Straddle Carrier-Ross Type; Sub-Base Finish; Machine (C.M.I. or similar tower crane); Tractor w/backhoe (over ½ yd.); Welder

GROUP 2 - A-Frame Truck; Batcher Plant (automatic dry batch); Bending Machine-Power Driven; Bituminous Mixer; Bituminous Paver; Bituminous Plant Engineer; Boatman; Bullfloat; Compactor or Tamper-Self-Propelled; Concrete Mixer (21 cu. ft. or over); Concrete Spreader-Power Driven; Dinkey Engine; Ditching Machine (less than 18"); Drilling Machine; Finish Machine and Bullfloat; Finishing Machine; Piledriving and Boilers; Forklift-Masonry and Material; Gunnite Machine; Head Greaser; Mesh Depresser-Mesh Placer; P.C.C.-Concrete Belt Placer; Roller-Asphalt Stone and Sub-Base; Sheepstone Roller Self Propelled; Spreader or Base Paver-Self-Propelled; Subgrader; Throttle Valve w/Air Compressor or Boiler; Tractor w/Backhoe (½ yard and under); Tractor-High Lift-Farm Type; Tractor-Industrial Type; Tractor w/Winch; Well Points; Winch Truck

GROUP 3 - Air Compressor (210 cu. ft. and over); Bituminous Distributor; Chair Cart; Concrete Curing Machine; Concrete Saw; Dope Pot-Power Agitated; Flexplane; Form Grader; Hydrohammer; Jacks-Hydrualic-Power Driven; Minor Equipment Operator; Paving Joint Machine; Post Hole Digger; Roller-Earth; Throttle Valve; Track Jack-Power Driven; Tractor-Farm Type; Truck Crane Driver

GROUP 4 - Air Compressor (less than 210 cu. ft.); Concrete Mixer (under 21 cu. ft.); Conveyor; Generator; Mechanical Heater; Oiler; Power Broom Pump; Welding Machine; Tenders

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TRUCK DRIVERS All Counties, except Crawford	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.65	35.50a	23.00a	b&c	
GROUP 2	9.70	35.50a	23.00a	b&c	
GROUP 3	9.75	35.50a	23.00a	b&c	
GROUP 4	9.80	35.50a	23.00a	b&c	
GROUP 5	9.85	35.50a	23.00a	b&c	
GROUP 6	9.90	35.50a	23.00a	b&c	
GROUP 7	10.00	35.50a	23.00a	b&c	
GROUP 8	10.05	35.50a	23.00a	b&c	
GROUP 9	10.10	35.50a	23.00a	b&c	
GROUP 10	10.15	35.50a	23.00a	b&c	
GROUP 11	10.30	35.00a	23.00a	b&c	

GROUP 1 - Air Compressors and Welding Machines, incl. those Pulled by Cars, Pickup Trucks, Tractors, & Fork Lifts; Dumpsters; & Lowboy Tenders
GROUP 2 - Mixer 2 Yds.
GROUP 3 - Mechanic Tenders and Greasers
GROUP 4 - Batch Trucks Wet or Dry 3 Batches or Under
GROUP 5 - Mixers 3 Yds.; Oil Distributors Tandem Axles, incl. Dog-Legs; & Winch Trucks
GROUP 6 - Batch Trucks Wet or Dry or Dry Over 3 Batches; Pavement Breakers; & Single Axle Semi-Trucks
GROUP 7 - Mechanics; Mixers 4 Yds.; Tandem Axle Semi-Trucks; & Trac-o-Trucks, Euclids, Tournapull when pulling other than Self-Loading Equipment up to and incl. 10 yds.
GROUP 8 - Tri-Axles
GROUP 9 - Low-Boys; Tandem Axle Semi-Trucks
GROUP 10 - Mixers Above 4 Yds.; & Trac-o-Trucks, Euclids, Tournapulls when Pulling other than Self-Loading Equipment 11 yds. to and incl. 16 yds.
GROUP 11 - Helicopter Pilot; Trac-o-Trucks, Euclids, Tournapulls when pulling other than Self-Loading Equipment over 16 yds.

Unlisted classifications needed for work not included within the scope of the classificaions listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Louisiana PARISHES: Bossier, Caddo & Calcasieu
DECISION NO. LA80-4039 DATE: Date of Publication
Supersedes Decision No. LA79-4070, dated August 17, 1979, in 44 FR 48564
DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Bossier & Caddo Parishes	$11.86	.70	1.00		.03
Calcasieu Parish	12.32	.525	.90		.04
BOILERMAKERS	12.00	.975	1.00		.03
BRICKLAYERS & STONEMASONS:					
Bossier & Caddo Parishes	10.95	.55	.65		
Calcasieu Parish	12.25	.53	.67		.05
CARPENTERS:					
Bossier & Caddo Parishes:					
Carpenters	10.70	.55	.45		.04
Millwrights	11.45	.55	.45		.04
Piledrivermen	10.95	.55	.45		.04
Calcasieu Parish:					
Carpenters and Pile-drivermen	11.18	.60	.33		.07
Millwrights	12.88				.07
CEMENT MASONS:					
Bossier & Caddo Parishes	10.20	.40			
Calcasieu Parish	9.45				
ELECTRICIANS:					
Bossier & Caddo Parishes:					
Electricians	13.25	1.75	3%		1%
Cable Splicers	13.75	1.75	3%		1%
Calcasieu Parish:					
Electricians	14.75	.55	3%+.40		1/10%
Cable Splicers	15.00	.55	3%+.40		1/10%
ELEVATOR CONSTRUCTORS:					
Bossier & Caddo Parishes:					
Mechanics	10.64	.895	.69	a+b	.035
Helpers	70%JR	.895	.69	a+b	.035
Calcasieu Parish:					
Mechanics	10.575	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
GLAZIERS:					
Bossier & Caddo Parishes	9.88		.30		.04
Calcasieu Parish	11.65				.02
IRONWORKERS:					
Bossier & Caddo Parishes	12.10	.45	.90		.06
Calcasieu Parish	11.78	.45	.65		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Bossier & Caddo Parishes:					
GROUP 1					
Laborers	$ 7.28	.25	.27		.05
GROUP 2					
Mason tenders, plasterer tenders; asphalt rakers, asphalt smoothers	7.38	.25	.27		.05
GROUP 3					
Mortar mixers	7.43	.25	.27		.05
GROUP 4					
Air jacks, vibrators; sewer pipe layers and wipers	7.48	.25	.27		.05
Calcasieu Parish:					
GROUP 1					
Building & general laborers; tenders (carpenter, plaster, cement finisher, mason); tank & vessel cleaners	8.63	.25	.27		.05
GROUP 2					
Air tool op.(except jackhammer); interior of closed tanks & vessels power equipment	8.73	.25	.27		.05
GROUP 3					
Mortar mixers	8.78	.25	.27		.05
GROUP 4					
Jackhammer operators	8.88	.25	.27		.05
GROUP 5					
Blasterers	9.59	.25	.27		.05
GROUP 6					
Blaster tenders; concrete cutters behind paving machines & puddlers; form setters & lines asphalt worker	9.15	.25	.27		.05
GROUP 7					
Wipe joints, laying pipe & tile from pumpcrete	8.99	.25	.27		.05
GROUP 8					
Interior or closed tanks & vessels manually	8.68	.25	.27		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Bossier & Caddo Parishes	$12.40				
Calcasieu Parish	13.485	.55			.01
MARBLE SETTERS:					
Bossier & Caddo Parishes	9.80	.55			
Calcasieu Parish	12.25	.53	.67		.05
PAINTERS:					
Bossier & Caddo Parishes:					
Painters, tape & float, vinyl & paperhangers	10.25	.40	.30		.05
Calcasieu Parish:					
GROUP 1					
Brush, roller, buffer	11.715		.30		
GROUP 2					
Paperhangers, taping and floating	11.915		.30		
GROUP 3					
Spray, Sandblasting	12.06		.30		
PLASTERERS:					
Bossier & Caddo Parishes	9.75			1.00	
Calcasieu Parish	10.07				
PLUMBERS & PIPEFITTERS:					
Bossier & Caddo Parishes	11.87	.70	1.10	1.00	.09
Calcasieu Parish	12.48	.67	.72		.08
ROOFERS:					
Bossier & Caddo Parishes:					
Roofers	9.60		.20		.04
Kettlemen	6.65		.20		.04
Calcasieu Parish:					
Roofers	11.13		.20		
SHEET METAL WORKERS:					
Bossier & Caddo Parishes	7.16	3%+.67			.15
Calcasieu Parish	12.25	.52	.55		.14
SOFT FLOOR LAYERS:					
Bossier & Caddo Parishes	10.70	.55	.45		.04
Calcasieu Parish	11.18	.60	.33		.07
SPRINKLER FITTERS	12.79	.75	1.05		.08
TERRAZZO WORKERS:					
Bossier & Caddo Parishes	9.80	.55			
Calcasieu Parish	12.25	.53	.67		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TILE SETTERS:					
Bossier & Caddo Parishes	$ 9.80	.55			
Calcasieu Parish	9.05	.48	.67		.02
TRUCK DRIVERS:					
Bossier & Caddo Parishes:					
GROUP 1					
Pick-ups, spotters and dumpers	7.97				
GROUP 2					
Stake bodies; flat beds (all sizes)	8.05				
GROUP 3					
Single axle dumps & water trucks; transit mix up to & including 3 yds.	8.30				
GROUP 4					
Tandem axle, dump, batch & water trucks over 3 tons, pick-ups with trailer	8.45				
GROUP 5					
Mississippi wagons, floats, tractor trailers; rubber tired tractors & wobble wheels	8.60				
GROUP 6					
Euclids, lowboys, Dempsey dumpsters, Koehring dumps, 5 axle trucks, transit mix over 3 yds.	8.80				
Calcasieu Parish:					
GROUP 1					
Pick-ups	9.31				
GROUP 2					
Stake bodies (all sizes)	9.79				
GROUP 3					
Trucks trailer & dump over 8 yds.; mixers on trucks over 3 yds.; Mississippi wagon & Koehring dumpsters & similar dirt moving equipment (up to & including 8 yds.)	10.02				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS CONT'D:					
Calcasieu Parish Contd:					
GROUP 4					
Mixers on trucks up to & including 3 yds.	9.81				
GROUP 5					
Winch trucks	9.91				
GROUP 6					
Dump trucks	9.83				
GROUP 7					
Mississippi wagons & Koehring dumpsters & similar dirt moving equipment over 8 yds.	10.25				
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate
b - Paid Holidays - A thru G

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Calcasieu Parish:					
GROUP 1	$ 8.56	.65	1.00		.05
GROUP 2	8.24	.65	1.00		.05
GROUP 3	8.03	.65	1.00		.05
GROUP 4	8.84	.65	1.00		.05
GROUP 5	11.23	.65	1.00		.05
GROUP 6	9.25	.65	1.00		.05
GROUP 7	9.93	.65	1.00		.05

POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS

GROUP 1 - Scale Operators; oiler-driver on motor crane; batch plant operator

GROUP 2 - Pumps under 3 inch suction

GROUP 3 - Oiler

GROUP 4 - Fireman

GROUP 5 - Combination oiler-compressor; combination oiler-fireman; asphalt spreaders; backhoe (all types); bulldozer; cableways; cherry pickers (all types); concrete mixers (over 1 sack); cranes; deck winch (2 drums or over); derricks; ditching or trenching machines (riding type); draglines; dredges; fork lifts (other than farm type) outside warehouses; foundation drill; front end loaders (except farm type); grease serviceman; hoist-1 drum (4 stories or more on buildings); hoist-1 drum (over 40 ft. on structures other than buildings); hoist (2 drum or over); locomotive (all types); mechanic; mixer plant operator-central mix; motor patrols; pile-drivers; pull cat; pump crete-6" and over discharge; push cat; road pavers; rollers (plant mix asphalt); scrapers; shovels; sidebooms; unit operator; welder, journeyman; well point system; whirleys; winch cats (cat D-4 & over); winch truck with A-Frame (5 ton & over); work boats-requiring licensed operator

GROUP 6 - Bush hog; compressor; concrete pump-under 6" discharge; concrete saw; deck winch (1 drum); distributors; ditching or trenching machines (non-riding type); dowel bar machine; farm-type tractors (when used to pull discs, grass cutters, etc.); hoist-1 drum (under 4 stories on buildings); hoist-1 drum (40 ft. or under on structures other than buildings); Kolum Buff Machines; mixers (1 sack & under); motorized street sweepers self-propelled; pump (3" & over); test pump-internal combustion engine powered; water blast pumps

GROUP 7 - Asphalt plant operator; boom trucks; bull floats; concrete spreader; farm type front end loaders; finishing machines (roadway, riding type); roller (other than plant mix asphalt); straddle buggies; winch truck with A-frame (under 5 tons); work boats-not requiring licensed operator

SUPERSEDEAS DECISION

STATE: Minnesota COUNTIES: Blue Earth, Fairbault, Freeborn & Mower

DESCRIPTION NUMBER: MN80-2031 DATE: Date of Publication

Supersedes Decision No.: MN79-2022, dated May 4, 1979 in 44 FR 26468

DESCRIPTION OF WORK: Building Construction (Including Residential), Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.81	.60	1.00		.14
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS:					
Blue Earth County					
Bricklayers, Stonemasons & Blocklayers	11.855	.65	.51	.61	
Mower County & that part of Freeborn Co., East of a Line running North & South from Geneva to Gordon & the City of Blooming Prairie:					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Caulkers & Cleaners	12.525	.70	.25		
Fairbault & Remainder of Freeborn County					
Bricklayers, Stonemasons, Tuck-Pointers & Blocklayers	11.95	.70	.50		
CARPENTERS:					
Building:					
Blue Earth County					
N.W. Portion of Co.	11.50				
Remainder of County	12.40	.42			
Freeborn & Fairbault Cos.					
Carpenters, Millwrights & Piledrivermen	11.02	.60	.60		
Mower County	12.22				
Site Preparation, Excavating & Incidental Paving:					
Carpenters & Piledrivermen					
Blue Earth County	7.32	.30			
Fairbault, Freeborn & Mower Cos.	8.48				

DECISION NO. MN80-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS & PLASTERERS:					
Building:					
Blue Earth County					
Cement Masons and Plasterers	12.05				
Mower Co. & that part of Freeborn Co., East of a line running North & South from Geneva to Gordon:					
Cement Masons and Plasterers	9.35	.50	.25		
Fairbault Co., & Remainder of Freeborn Co.:					
Cement Masons & Plasterers	11.00	.70	.50		
Site Preparation, Excavation & Incidental Paving:					
Blue Earth County Fairbault Co.; Freeborn Co.; (West of a line running North & South from Geneva to Gordonsville)	10.10				
Mower Co. & Remainder of Freeborn County	9.43	.42	.25		
	9.50	.35	.25		
ELECTRICIANS:					
Blue Earth & Fairbault Counties					
Jobs outside the Mankato City Area less than $50,000	10.40	7%	6%	10½%	3/4of1%
Jobs within a 5 mile radius of Mankato $50,000 & over	12.15	7%	6%	10½%	3/4of1%
Freeborn & Mower Cos. $75,000 or more	11.39	.66	3%	6%	.25%
$75,000 or less & Residential	9.11	.66	3%	6%	.25%

DECISION NO. MN80-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
Blue Earth County	11.31	.745	.35	a	.02
GLAZIERS:					
Blue Earth County	11.51			.30	
Remainder of Counties	10.00				
IRONWORKERS	12.95	.85	.90		.04
LABORERS:					
General Laborers & Carp. Tender	10.00	.35	.15		
Mason Tenders & Vibrator Oprs.	10.10	.35	.15		
Mortar Mixers	10.15	.35	.15		
MARBLE-TILE-TERRAZZO WORKERS:					
Marble Setters	12.355	.655	.53		
Terrazzo Workers	12.82	.64	.25		
Tile Setters	12.30	.62	.50		
Marble Setters' Finishers	9.35	.37	.50		
Tile Setters Finishers	11.45	.62	.50		
PAINTERS:					
Mower County					
Brush & Roller	11.45	.37	.45		.08
Spray	11.95	.37	.45		.08
Remainder of Counties					
Brush & Tapers	11.10	.70	.25		.11
Spray	11.60	.70	.25		.11
Structural Steel	12.10	.70	.25		.11
PLUMBERS & STEAMFITTERS:					
Blue Earth County	13.27	.53			.05
Remainder of Counties	13.26	.50	.20		.02
ROOFERS:					
Mower County	10.02		.20		
Remainder of Counties	11.10	.65			
SHEET METAL WORKERS	12.69	.60	.77		.07
SPRINKLER FITTERS	14.10	.75	1.05		.08
TRUCK DRIVERS	10.00				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:

a. Employer contributes 8% BHR for over 5 years service & 6% BHR for under 5 years service as vacation pay. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day & Day after Thanksgiving

DECISION NO. MN80-2031 MINN-12-LAB

LABORERS: SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	10.05	.35	.15		
CLASS 2	10.15	.35	.15		
CLASS 3	10.20	.35	.15		
CLASS 4	10.30	.35	.15		
CLASS 5	10.45	.35	.15		
CLASS 6	10.50	.35	.15		
CLASS 7	10.55	.35	.15		

CLASS 1 - Unskilled Laborers; Bricklayers & Carpenter Tenders; Drill Runner Helper; Laborers-Wrecking & Demolition; Landscape Gardner; Pipe Handler (Water, Gas, Cast Iron); Salamander Heater & Blower Tender; Sod; Sod Layer & Nurseryman, Stonemason Tender
CLASS 2 - Bituminous Shoveler; Bottom Man (Sewer, Water or Gas Trench); Cement Coverman (Batch trucks); Cement Handler (Bulk or Bag) Chain Saw Shoveler; Tamper & Puddler (Paving); Concrete Vibrator; Conduit Layers (w/o wiring); Drill Runner (Heavy, incl. Churn Drill) Dumper (Wagon, Truck Jackhammerman; Joint Sawyer, Kettlemen (Bituminous or Lead); Mortar Mixers; Paving Buster; Power Buggy Tunnel Laborer (Atmospheric Pressure)
CLASS 3 - Bituminous Tamper
CLASS 4 - Bituminous Raker; Floater & Utility Man; Caisson work; Cofferdam
CLASS 5 - Nozzleman (Gunite)
CLASS 6 - Pipelayer (Sewer, Water & Gas) Laser Beam
CLASS 7 - Powderman - Tunnel Miner

DECISION NO. MN80-2031 MINN-1-PEO-1

POWER EQUIPMENT OPERATORS: Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	15.70	.70	.55		.05
CLASS 2	14.05	.70	.55		.05
CLASS 3	13.80	.70	.55		.05
CLASS 4	13.20	.70	.55		.05
CLASS 5	12.85	.70	.55		.05
CLASS 6	12.75	.70	.55		.05
CLASS 7	12.50	.70	.55		.05
CLASS 8	12.38	.70	.55		.05
CLASS 9	12.30	.70	.55		.05
CLASS 10	12.03	.70	.55		.05
CLASS 11	11.15	.70	.55		.05
CLASS 12	10.70	.70	.55		.05

CLASS 1 - Helicopter Operator
CLASS 2 - Truck & Crawler Cranes with 300' of Boom and over, including Jib
CLASS 3 - Truck & Crawler Cranes w/200' of Boom, up to and not including 300' of Boom, including Jib
CLASS 4 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom including Jib
CLASS 5 - Traveling Tower Crane
CLASS 6 - Master Mechanic; Pile Driving Operator
CLASS 7 - Truck & Crawler Cranes up to 150' of Boom, including Jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes Stationary Tractor Operator with Boom; All Terrian Vehicle Cranes; Fireman, Chief License
CLASS 8 - Air Compressor Operator, 375 CFM or over; Pump Operator and/or Conveyor Opr., (2 or more machines); Hoists Engineer (two drum); Mechanic or Welder; Pumpcrete or Complaco-Type Machine Operator; Forklift
CLASS 9 - Boom Truck Operator; Concrete Mixer Operator; Drill Rigs - Heavy Rotary or Churn when used for Caisson Drilling for Elevator Cylinder or Building Construction; Front End Loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator
CLASS 10 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.

DECISION NO. MN80-2031
POWER EQUIPMENT OPERATORS: Building Cnstruction (Cont'd)

CLASS 11 - Air Compressor Opr., 375 CFM Or over; Pump and/or Conveyor Opr.; Fireman, Temporary Heat, Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Opr. (see Schedule 16 on Air Comp., Pump, Conveyors, Welding Mach.)
CLASS 12 - Mechanical Space Heater (Temporary Heat); Oiler or Greaser; Elevator Operator

DECISION NO. MN80-2031 MINN-6-PEO

POWER EQUIPMENT OPERATORS: SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	15.65	.70	.55		.05
GROUP 2	12.36	.70	.55		.05
GROUP 3	11.95	.70	.55		.05
GROUP 4	11.83	.70	.55		.05
GROUP 5	11.73	.70	.55		.05
CLASS 6	10.75	.70	.55		.05
GROUP 7	10.15	.70	.55		.05

GROUP 1 - Helicopter Pilot
GROUP 2 - Crane with over 135' Boom, excluding Jib, Dragline and/or other similar Equipment w/Shovel Type Controls 3 cu. yds. & over Mfg. rated capacity
GROUP 3 - Cableway Op., Concrete Mixer, Stationary Plant over 34E, Derrick Dragline and/or similar Equipment with Shovel Type Control up to 3 cu. yds. Mfg. rated capacity, Dredge Operator or Engineer, Dredge Oper. (power) & Engineer, Front End Loader Op., 5 cu. yds. & over, Grader or Motor Patrol, Finishing Earthwork & Bituminous, Locomotive Crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole, Op., incl. Power Supply, Mucking Mach., incl. Mucking Operations Conway or similar type, Refrigeration Plant Engineer, Tandem, Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op., 100 HP & over
GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled Traveling Soil Stabilizer
GROUP 5 - Air Track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Straddle Carrier Op., Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive,all types, Mechanic or Welders, Multiple machines, such as Air Compressor, Welding Machines, Generators, Pumps or Crane Crane Oilers, Paving Breaker or Tamping Machine Op., (power-driven-mighty might or similar type, Pick-up Sweeper, 1 cu. yd. & over Hopper Capacity, Pipeline Wrapping, Cleaning or Bending Actuated Horizontal Boring Mach., over 6" Op., Pugmill Op., Roller, 8 Tons & over, Rubber Tired Farm Tractor, Backhoe Att., Sheep Foot Op., Tire Tamper & Hallast Mach. Op., Tractor Op., over D2, TD6 or similar HP with power take-off, Tractor Op., over 50HP without Power Take-off, Trenching Machine Op., (sewer, water, gas) Turnapull Op., (or similar type) Well Point Installation, Dismatling or Repair Mechanic

DECISION NO. MN80-2031

POWER EQUIPMENT OPERATOR: (CONT'D)

GROUP 6 - Air Compressor Op. 375 CFR or over, Bituminous Spreader and Bituminous Finishing Machine Op., Concrete Dist. & Spreader Oper., Finishing Machine Longitudinal Float Op., Joint Mach. Op., Spray, Concrete Mixer Op. 14S and under, Concrete Op. (Mult. Blade), Curb Mach. Op., Fine Grade Op., Form Trench Digger, Front End Loader Op. (up to & incl. 1 cu. yd.), Grader Op. (motar Patrol, Gunite Op. Gunall, Lead Greaser on Truck or Rack, Loader Op., Power Actuated Augars and Boring Mach. Op. Power Actuated Jacks Op., Pump Op., Roller Op., Self-Propelled Chip Spreader, Shouldering Mach. Op., Stump Chipper Op., Tractor Op. (D2, TD 6 or similar HP with power take-off)

GROUP 7 - Brakeman, Switchman, Conveyor Op., Deckhand, Fireman, Tank Car Heater Op., Gravel Screening Plant Op., Greaser Leverman, Mech. Helper, Mech. Space Heater, Oiler, Self Prop. Vib. Packer Op., Sheep Foot Roller, Tractor Op. 50 HP or less w/o Power Take-Off, Truck Crane Oiler

DECISION NO. MN80-2031 MINN-5-TD

TRUCK DRIVERS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING Fairbault County	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.72	.65	.65		
GROUP 2	9.27	.65	.65		
GROUP 3	9.17	.65	.65		
GROUP 4	8.97	.65	.65		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand and power operated winches); Truck Train Mechanic, Welder; Tractor-Trailer Off-Road Truck

GROUP 2 - Tri-Axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete, Slurry Driver

GROUP 3 - Bituminous Distributor; Bitminous Distributor (1-Man Operation); Tandem Axle

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & Truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman, Tractor Operator (wheel type used for any purpose) Pilot Car Driver, Self-Propelled Packer; Slurry Operator; Single Axle Trucks

DECISION NO. MN80-2031

MINN-7-TD

TRUCK DRIVERS: SITE PREPARATION, EXCAVATING & INCIDENTAL PAVING Blue Earth County	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	10.32	.65	.65		
GROUP 2	9.87	.65	.65		
GROUP 3	9.77	.65	.65		
GROUP 4	9.57	.65	.65		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck Train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-Axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & Truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman, Tractor Operator (Wheel type used for any purpose) Pilot Car Driver, Self- Propelled Packer; Slurry Operator; Single Axle Trucks

DECISION NO. MN80-2031

MINN-55-TD

TRUCK DRIVERS SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING Freeborn & Mower Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	10.85	.65	.65		
GROUP 2	10.40	.65	.65		
GROUP 3	10.30	.65	.65		
GROUP 4	10.10	.65	.65		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck Train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-Axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operator); Tandem Axle

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & Truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman, Tractor Operator (Wheel type used for any purpose) Pilot Car Driver, Self-Propelled Packer; Slurry Operator; Single Axle Trucks

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

STATE: Minnesota COUNTY: Olmsted
DECISION NUMBER: MN80-2032 DATE: Date of Publication
Supersedes Decision NO. MN79-2023, dated May 4, 1979 in 44 FR 26473
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.81	.60	1.00		.14
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS:					
Bricklayers; Stonemasons; Cement Blocklayers; Pointers; Caulkers & Cleaners	12.525	.70	.25		
CARPENTERS:					
Building	11.40	.60	.60		
Site Preparation. Excavation & Incidential Paving					
Carpenters & Piledrivermen	7.88	.50	.20		
CEMENT MASONS:					
Building	12.45				
Site Preparation, Excavation & Incidential Paving	10.35				
ELECTRICIANS:					
$75,000 or more	11.39	.66	3%	6%	.25%
Under $75,000 & Residential	9.11	.66	3%	6%	.25%
GLAZIERS	10.06			.30	
IRONWORKERS	12.95	.85	.90		.04
LABORERS: BUILDING CONSTRUCTION					
General Laborer; Carpenter Tender; Flagman; Power Buggy Operator Mason Tender; Drill Runner; Vibrator Operator	10.00	.35	.15		
Rebar Laborer	10.10	.35	.15		
Mortar Mixer; Air Acutated Tool	10.15	.35	.15		
Plasterer Tender	10.25	.35	.15		
Nozzleman	10.40	.35	.15		
LATHERS	10.50				
MARBLE SETTERS	12.355	.655	.53		
PAINTERS:					
Brush & Roller	11.45	.37	.45		.08
Spray	11.95	.37	.45		.08
Structural Steel	11.70	.37	.45		.08

DECISION No. MN80-2032

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS	$11.85				
PLUMBERS & STEAMFITTERS	13.26	.50	.20		.02
ROOFERS	9.40	.42	.33		
SHEET METAL WORKERS	12.69	.60	.77		.07
SPRINKLER FITTERS	14.10	.75	1.05		.08
TILE SETTERS	13.50				
TRUCK DRIVERS	10.00				
Welders - Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. MN80-2032

MINN-12-LAB

LABORERS: SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$10.05	.35	.15		
CLASS 2	10.15	.35	.15		
CLASS 3	10.20	.35	.15		
CLASS 4	10.30	.35	.15		
CLASS 5	10.45	.35	.15		
CLASS 6	10.50	.35	.15		
CLASS 7	10.55	.35	.15		

CLASS 1 - Unskilled Laborers, Bricklayer & Carpenter Tenders; Drill Runner Helper; Laborers-Wrecking & Demolition; Landscape Gardner; Pipe Handler (Water, Gas, Cast Iron); Salamander Heater & Blower Tender; Sod Layer & Nurseryman, Stonemason Tender.
CLASS 2 - Bituminous Shoveler; Bottom Man (Sewer, Water or Gas Trench); Cement Coverman (Batch Trucks); Cement Handler (Bulk or bag) Chain Saw Shoveler; Tamper & Puddler (Paving); Concrete Vibrator; Conduit Layers (w/o wiring); Drill Runner (Heavy, incl. Churn Drill) Dumper (Wagon. Truck Jackhammerman; Joint Sawyer, Kettlemen (Bituminous or Lead); Mortar Mixers; Paving Buster; Power Buggy; Tunnel Laborer (Atmospheric Pressure).
CLASS 3 - Bituminous Tamper
CLASS 4 - Bituminous Raker; Floater & Utility Man; Caisson Work; Cofferdam
CLASS 5 - Nozzleman (Gunite)
CLASS 6 - Pipelayer (Sewer, Water & Gas) Laser Beam
CLASS 7 - Powderman - Tunnel Miner

DECISION NO. MN80-2032

MINN-1-PEO-1

POWER EQUIPMENT OPERATORS: Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$15.70	.75	.60		.05
CLASS 2	14.05	.75	.60		.05
CLASS 3	13.80	.75	.60		.05
CLASS 4	13.20	.75	.60		.05
CLASS 5	12.85	.75	.60		.05
CLASS 6	12.75	.75	.60		.05
CLASS 7	12.50	.75	.60		.05
CLASS 8	12.38	.75	.60		.05
CLASS 9	12.30	.75	.60		.05
CLASS 10	12.03	.75	.60		.05
CLASS 11	11.15	.75	.60		.05
CLASS 12	10.70	.75	.60		.05

CLASS 1 - Helicopter Operator
CLASS 2 - Truck & Crawler Cranes with 300' of Boom and over, including jib
CLASS 3 - Truck & Crawler Cranes w/200' of Boom, up to and not including 300' of Boom, including jib
CLASS 4 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib
CLASS 5 - Traveling Tower Crane
CLASS 6 - Master Mechanic; Pile Driving Operator
CLASS 7 - Truck & Crawler Cranes up to 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary Tractor Operator with Boom; All Terrain Vehicle Cranes; Firemen, Chief License
CLASS 8 - Air Compressor Operator, 375 CFM or over; Pump Operator and/or conveyor Opr., (2 or more machines); Hoist Enginneer (two drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Operator; Forklift
CLASS 9 - Boom Truck Operator; Concrete Mixer Operator; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End Loader Operator; Hoist Engineer (one drum); Staddle Carrier Operator; Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator
CLASS 10 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.
CLASS 11 - Air Compressor Opr., 375 CFM or over; Pump and/or Conveyor Opr.; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Opr. (see Schedule 16 on Air Comp., Pumps, Conveyors, Welding Mach.
CLASS 12 - Mechanical Space Heater (Temporaty Heat); Oiler or Greaser; Elevator Operator.

DECISION No. MN80-2032

POWER EQUIPMENT OPERATORS: SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.65	.70	.55		.05
GROUP 2	12.36	.70	.55		.05
GROUP 3	11.95	.70	.55		.05
GROUP 4	11.83	.70	.55		.05
GROUP 5	11.73	.70	.55		.05
GROUP 6	10.75	.70	.55		.05
GROUP 7	10.15	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over mfg. rates capacity

GROUP 3 - Cableway Op., Concrete Mixer, Stationary Plant over 34E,Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. mfg. rates capacity, Dredge Operator or Engineer, Dredge Op., (power) & Yds. & over, Grader or Motor Patrol Finishing Earth & Bituminous, Locomotive Crane Op., Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole Op., incl. power supply, Mucking Mach., incl, mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op., (Boom Type) Truck Crane Op., Tugboat Op., 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op.,Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over. Self-Propelled Traveling Soil Stabilizer

GROUP 5 - Air Track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yd., Hoist Engineer, Hydraulic Tree Planter Launcherman, Locomotive all type, Mechanic or Welder, Multiple machines, such as Air Compressors, Welding Machines, Generators, Pump or Crane Oilers, Paving Breaker or Tamping Machines Op., (Power-Driven - Mighty Might or similar type), Pick-up Sweeper, 1 cu. yd. & over Hopper capacity, Pipeline Wrapping, Cleaning or Bending Machine Op., Power Plant Engineer, Power Actuated Horizontal Boring Machine, Over 6" Op., Pugmill Op., Roller, 8 tons & over, Rubber Tired Farm Tractor, Backhoe, Att., Sheep Foot Op., Tie Tamper & Hallast Mach. Op.. Tractor Op., over D2, TD6 or similar HP with Power Take-off, Tractor Op., over 50 HP without power take-off, Trenching Machine Op., (sewer, water, gas) Turnapull Op., (or similar type) Well Point Installation, Dismantling or Repair Mechanic

DECISION No. MN80-2032

POWER EQUIPMENT OPERATORS: (CONT'D)

GROUP 6 - Air Compresor Op. 375 CFR or over, Bituminous Spreader and Bituminous Finishing Machine Op., Concrete Dist, & Spreader Op., Finishing Machine Longitudinal Float Op., Joint Mach, Op., Spray., Concrete Mixer Op. 14S and under, Concrete Op., (Mult. Blade), Curb Mach. Op., Fine Grade Op., Form Trench Digger, Front End Loader Op., (up to & inc. 1 cu. yd.), Grader Op. (mortar patrol), Gunite Op. Gunall, Lead Greader on Truck or Rack, Loader Op., Power Actuated Augars and Boring Mach. Op. Power Actuated Jacks Op., Pump Op., Roller Op., Self-Propelled Chip Spreader, Shouldering Mach Op., Stump Chipper Op., Tractor Op., (D2, TD6 or similar HP with power take - off).

GROUP 7 - Brakeman, Switchman, Conveyor Op., Deckhand, Fireman, Tank Car Heater Op., Gravel Screening Plant Op., Greaser Leverman, Mech. Helper,Mech.Space Heater; Oiler, Self-Prop. Vib. Packer Op., Sheep Foot Roller, Tractor, Op., 50 HP or less w/o power take-off, Truck Crane Oiler.

DECISION NO. MN80-2032 MINN-55-TD

TRUCK DRIVERS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$10.85	.65	.65		
GROUP 2	10.40	.65	.65		
GROUP 3	10.30	.65	.65		
GROUP 4	10.10	.65	.65		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Operator; Single Axle Trucks.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTY: Lancaster
DECISION NO.: PA80-3038 DATE: Date of Publication
Supersedes Decision No. PA78-3070 dated September 29, 1978, in 43 FR 45162.
DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	11.61	1.12	.90		.01
BOILERMAKERS	14.64	1.175	1.00		.02
BRICKLAYERS	10.50	.65	.45		
CARPENTERS	10.92	.55	.65		.05
CEMENT MASONS	9.94	.35	.25		.01
ELECTRICIANS:					
W. Calico, E. Calico, Brecknock, E. Carl, &. Caernarvon Twps.	12.49	.78	3%+.30		.03
That portion northwest of a line extending from the Susquehanna River to the intersection of State Highways 441 and 241 along 241 to the Borough of Elizabethtown around the limits of Elizabethtown on the west and north side, but including the Masonic Homes in Elizabethtown continuing along State Highway 241 to Lebanon County and that portion north of the Pennsylvania Turnpike, but including all building on the turnpike, from Lebanon County line West Cocalico township	11.36	.65	3%+.67		¼ of 1%
Remainder of County	10.95	.60	3%		1/8of1%
ELEVATOR CONSTRUCTORS	11.23	.745	.56	a+b	.025
ELECATOR CONSTRUCTORS' HELPERS	70%ofJR	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS' HELPER (PROB.)	50%ofJR				
GLAZIERS	9.19	.40	.30		.01
IRONWORKERS	12.505	1.24	1.36		.03
LABORERS:					
General Laborers	7.55	.50	.67		
Operators of Jackhammer	7.75	.50	.67		
Wagon Drill	7.85	.50	.67		
Handling of all materials	7.70	.50	.67		
Laborers assisting tile	7.60	.50	.67		
Handling & using dynamite	7.88	.50	.67		

DECISION NO. PA80-3038

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Caisson Work (Top Men)	7.80	.50	.67		
Caisson Work (Bottom Men)	8.00	.50	.67		
Mixer Man	7.95	.50	.67		
LATHERS	10.71	.40	.25		.01
LINE BURNERS	10.75	.40	.25	c	.01
LINE CONSTRUCTION:					
Linemen	12.05	.45	3%		3/8 of 1%
Cable Splicers	12.05	.45	3%		3/8 of 1%
Groundman	7.23	.45	3%		3/8 of 1%
Winch truck operators	8.43	.45	3%		3/8 of 1%
MARBLE SETTERS	9.50	.45	3%		3/8 of 1%
MILLWRIGHTS	13.52	.60	.70		.05
PAINTERS:					
Elizabeth Dowetal Township					
Brush	9.62	.35	.37		.02
Steel	10.07	.35	.37		.02
Spray	10.37	.35	.37		.02
Remainder of County:					
Brush	9.75	.75	.80		
Steel	10.80	.75	.80		
Spray	10.80	.75	.80		
Roller	9.75	.75	.80		
PILEDRIVERMEN	11.52	2.48	1.40	d	.13
PLASTERERS	8.60	.35	.25		.01
PLUMBERS	11.80	1.00	1.00		.12
ROOFERS:					
Composition, damp & waterproofing	14.17	1.40	.95	e	
ROOFERS, ASSISTANT	7.00	1.40	.95	e	
SHEET METAL WORKERS	11.06	1.42	1.18		.14
SPRINKLER FITTERS	13.55	.75	1.05		.08
SOFT FLOOR LAYERS	9.60	.55	.65		.05
STEAMFITTERS	11.80	1.00	1.00		.12
STONEMASONS	10.50	.65	.45		
TERRAZZO WORKERS	9.50	.45	.45		
TILE SETTERS	9.50	.45	.45		

DECISION NO. PA80-3038

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Six (6) paid holidays: A through F, Plus the Friday after Thanksgiving Day.

c. Nine paid Holidays: A through F and Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday and is available for work the days preceeding and following the holidays.

d. Paid Holiday: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans Day and Thanksgiving Day.

e. Paid Holidays: Election Day.

DECISION NO. PA80-3038

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$13.19	7.9%	10.3%	a	1.8%
GROUP 2	12.90	7.9%	10.3%	a	1.8%
GROUP 3	12.03	7.9%	10.3%	a	1.8%
GROUP 4	11.26	7.9%	10.3%	a	1.8%
GROUP 5	10.79	7.9%	10.3%	a	1.8%
GROUP 6	9.88	7.9%	10.3%	a	1.8%
GROUP 7	13.44	7.9%	10.3%	a	1.8%
GROUP 7-A	13.69	7.9%	10.3%	a	1.8%
GROUP 7-B	13.93	7.9%	10.3%	a	1.8%

CLASSIFICATIONS DEFINITIONS

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helocopters, machines similar to the above

GROUP 2 : All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist wirh two towers, pavers 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pippin type bachoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt palnt engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

GROUP 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishingmachines concrete breaking machines, rollers, seaman pulverzing mixer, power broom, seeding spreader, tireman (for power equipment) machines similar to above

GROUP 5: - Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core drill helper

GROUP 7; All machines with booms (including jib, masts, leads, etc): 100 ft. and over

GROUP 7-A: 150 ft. and over
GROUP 7-B: 200 ft. and over

FOOTNOTES:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

SUPERSEDEAS DECISION

STATE: Wisconsin

COUNTIES: Columbia, Dane Iowa & Sauk

DECISION NUMBER: WI80-2037

DATE: Date of Publication

Supersedes Decison No. WI78-2121 dated October 20, 1978 in 43 FR 49230.

DESCRIPTION OF WORK: Building Construction (excluding Single family homes and apartments up to and including 4 stories); Dane County only (includes single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.55	.95	1.00	1.25	.04
BOILERMAKERS	12.87	1.275	1.00		.05
BRICKLAYERS	10.29	.75	1.00	.50	.01
BRICKLAYERS: (Columbia & Sauk COunties)	11.09	.75	.70		.01
CARPENTERS	10.92	.60	.70		.05
Residential	6.72	.60	.40		.05
CEMENT MASONS (Columbia & Sauk Counties)	11.25	.75	.40		
CEMENT MASONS (Dane & Iowa Cos.)	10.55	.75	1.00		
ELECTRICIANS	11.89	.84	3%	8%	3/4%
Residential	6.73	.84	3%	8%	3/4%
ELEVATOR CONSTRUCTION:					
Constructors	12.04	1.045	.82	a+b	
Helpers	8.43	1.045	.82	a+b	
Helpers (Prob.)	50% JR				
GLAZIERS	11.93	.70			.03
IRONWORKERS: Structural, ornamental & reinforcing	12.04	.75	.75		.07
LINE CONSTRUCTION:					
Linemen	11.82	.62	7%		
Heavy Equipment Operator	10.64	.62	7%		
Light Equipment Operator	9.46	.62	7%		
Heavy Groundman - Truck Drivers	8.27	.62	7%		
Light Groundman - Truck Drivers	7.68	.62	7%		
Groundman	6.50	.62	7%		
MILLWRIGHTS & PILEDRIVERMEN	11.32	.60	.70		.05
PAINTERS					
Brush	10.46	.80	.30	.40	
Spray	11.21	.80	.30	.40	
Structural Steel (brush)	10.46	.80	.30	.40	
Swing Stage	10.46	.80	.30	.40	
Sandblaster	10.71	.80	.30	.40	
PLASTERERS (Columbia & Sauk Cos.)	11.25	.75	.40		
PLASTERERS	10.65	.75	1.00		
PLUMBERS	13.14	.60	1.00		1%

Decision No. WI80-2037

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS	10.92	.60	.70		.05
SPRINKLER FITTERS	13.33	.60	1.05		.08
SHEET METAL WORKERS	12.62	1.00	.72		.07
TERRAZZO WORKERS	11.05	.75	.40		
TILE SETTERS	10.80	.75	.40		
TRUCK DRIVERS - Single or Tandem Axle	8.45	d	e		

Welders receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Holidays: A through F.

b. Employer contributes 8 % of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Pay credit for employee who has worked in business less than 5 years.

c. Holidays, A thru F plus Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regularly scheduled work days immediately preceding and following the holidays.

d. $93.61 per month H&W fund.

e. $24.00 per week Pension fund.

Decision No. WI80-2037

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUILDING, SEWER, WATER, EXCAVATING AND INCIDENTAL PAVING•					
Laborers, Building;	9.78	.55	.45		.02
Pneumatic tool op., air hammer, jackhammer, concrete buster, sheeting driver, air spade	10.03	.55	.45		.02
Vibrator, air tamper & mortar mixer	9.93	.55	.45		.02
General laborer, concrete work, form strippers, mason tenders, building wreckers	9.64	.55	.45		.02

DECISION NO. WI80-2037

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	12.02	1.05	.90		.05
GROUP II	11.77	1.05	.90		.05
GROUP III	11.47	1.05	.90		.05
GROUP IV	11.37	1.05	.90		.05
GROUP V	10.96	1.05	.90		.05
GROUP VI	10.62	1.05	.90		.05

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Derrick Operator and Traveling Cranes (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor

GROUP II - Material Hoists, Tractor or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 Tons or Under), Manhoist, Tractor (over 40 H.P.), Bulldozer H.P.), Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (wheel type or chain tyep having over 8-inch bucket)

GROUP III - Concrete and Grout Pumps, Backfiller, Concrete Auto Breaker (large), Concrete Finishing Machine (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (well points), Trencher (chain type having bucket 8-inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (pile drivers and derricks)

GROUP IV - Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (tuggers) Stump Chipper (large), Boats, Safety, Work, Barges and launch)

GROUP V - Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor Mounted Equipment, Post Hole Diggers, Stone Crushers and Screening Plants, Firemen (asphalt Plants), Air Compressor (300 CFM or over)

GROUP VI - Generators over 150KW Pumps over 3", Augers (vertical and horizontal), Combination Small Equipment Operator; Air, Electric Hydraulic Jacks (Slip form), Compressors (under 300 CFM); Welding Machines, Heaters (mechanical), Prestress Machines, Bobcats, Generators (under 150 KW), Pumps (3" and under); Winches (small electric), Oiler and Greaser, Boiler Operators (temporary heat), Rotary Drill Helpers, Conveyors, forklift (12' and under)

SUPERSEDEAS DECISION

STATE: Wisconsin COUNTIES: Calumet, Fond Du Lac, Manitowoc, Outagamie & Sheboygan

DECISION NUMBER: WI80-2039 DATE: Date of Publication

Supersedes Decision No. WI78-2116 dated October 20, 1978 in 43 FR 49228

DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.36	.95	.50	.85	.05
BOILERMAKERS	12.87	1.275	1.00		.05
BRICKLAYERS	10.55	.75	.70		.05
CARPENTERS:					
All Counties but Sheboygan	10.72	.60	.70		.05
Sheboygan County Only	10.80	.75	.70		
Millwrights & Piledrivermen:					
All Counties but Sheybogan	11.12	.60	.70		.05
Sheboygan County Only	11.84	.75	.70		
CEMENT MASONS	10.05	.75	.70		.05
ELECTRICIANS:					
Calumet & Outagamie Cos.	12.73	.70	3%		
Manitowoc Co.	12.60	.60	3%		1/8%
Fond Du Lac & Sheboygan Cos.	11.35	1.10	3%+.45		1%
ELEVATOR CONSTRUCTORS:					
Outagamie Co:					
Constructors	12.13	1.045	.69	a+b	.03
Helpers	8.49	1.045	.69	a+b	.03
Helpers (Prob.)	50%of JR				
Remainder of Counties:					
Constructors	13.24	1.045	.69	a+b	.03
Helpers	9.27	1.045	.69	a+b	.03
Helpers (Prob.)	50%of JR				
GLAZIERS	10.54	.92	.80	.50	
IRONWORKERS:					
Western Part of Fond Du Lac and Outgamie Cos.	12.04	.75	.75		.07
Remainder of the Area	11.36	1.30	1.00	1.21	.15
LABORERS:					
General Laborer; Building Wrecker; Form Stripper	8.90	.55	.45		.03
Plaster Tender Mod Carrier, Mason Tender, Vibrator Operator	9.00	.55	.45		.03
Jackhammer Operators, Driller, Gunnite Men, Mortar & Plaster Mixer, Fork Lift Operator	9.15	.55	.45		.03

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Northern Manitowoc & Outagamie Counties	$10.44	.75	.75	.17	
Remainder of Counties	9.82	.75	1.40		.03
PAINTERS:					
Fond Du Lac, Outagamie & Northwest Corner of Calumet Counties:					
Brush, Paperhangers and Structural Steel	10.25	.85	.25		.03
Spray & Sandblasting	10.75	.85	.25		.03
Manitotoc and the remainder of Calumet Counties:					
Brush	9.60				
Spray and Roller	10.10				
Sheboygan County:					
Brush	8.55	.45	.30	.30	
Drywall Finishing	8.55	.45	.30	.30	
Spray	9.05	.45	.30	.30	
PLASTERERS	10.55	.75	.70		.05
PLUMBERS & STEAMFITTERS:					
Outagamie Co. and the Northwestern corner of Calumet County	12.70	1.00	1.00		.04
Manitowoc Co. and the Northeastern part of Calumet County	12.77	.85	1.00		.05
Fond Du Lac, Sheboygan & the remainder of Calumet County	11.33	.80	1.25	1.00	.03
ROOFERS:					
Calumet & Manitowoc Cos.	11.60	.25	.05		
Fond Du Lac Co.	10.15	1.00	.50		
Outagamie Co.	9.18	.75	.60	.40	
Sheboygan Co.	8.25	.85	.05		
SHEET METAL WORKERS:					
Outagamie Co.	11.31	.80	.60	1.45	.04
Remainder of Counties	11.18	.85	.98	1.30	.04
TERRAZZO WORKERS & TILE SETTERS	10.55	.75	.70		.05
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Six paid holidays, A thru F

b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP I	$12.02	1.05	.90		.05
GROUP II	11.77	1.05	.90		.05
GROUP III	11.47	1.05	.90		.05
GROUP IV	11.37	1.05	.90		.05
GROUP V	10.96	1.05	.90		.05
GROUP VI	10.62	1.05	.90		.05

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Derrick Operator and Traveling Cranes (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor

GROUP II - Material Hoists, Tractor or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 Tons or Under), Manhoist, Tractor (over 40 H.P.), Bulldozer, Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (wheel type or chain type having over 8-inch bucket)

GROUP III - Concrete and Grout Pumps, Backfiller, Concrete Auto Breaker (large), Concrete Finishing Machine (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (well Points), Trencher (chain type having bucket 8-inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (pile drivers and derricks)

POWER EQUIPMENT OPERATORS (Cont'd)

GROUP IV - Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (tuggers) Stump Chipper (Large), Boats, Safety Work, Barges and Launch

GROUP V - Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor Mounted Equipment, Post Hole Diggers, Stone Crushers and Screening Plants, Firemen (asphalt plants), Air Compressor (300 CFM or over)

GROUP VI - Generators over 15 KW, Pumps over 3", Augers (vertical and horizontal), Combination Small Equipment Operator; Air, Electric Hydraulic Jacks (Slip form), Compressors (under 300 CFM); Welding Machines, Heaters (mechanical), Prestress Machines, Bobcats, Generators (under 150 KW), Pumps (3" and under); Winches (small electric), Oiler and Greaser, Boiler Operators (temporary heat), Rotary Drill Helpers, Conveyors, Forklift (12' and under)

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Part III

Department of the Interior

Bureau of Land Management

Simultaneous Oil and Gas Leasing System

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[Circular No. 2465]

Simultaneous Oil and Gas Leasing System

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets forth changes in the simultaneous oil and gas leasing system, some of which apply to all onshore oil and gas leasing. These changes are intended to resolve problems with the present system by reducing speculation, requiring participants to have greater control of, and responsibility for, their involvement in the leasing system, and promoting development and exploration of oil and gas resources on the public lands.

EFFECTIVE DATE: June 16, 1980.

ADDRESS: Any inquiries or suggestions should be sent to: Director (530), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Charles E. Weller (202) 343-7753.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the Federal Register on September 28, 1979 (44 FR 56176). Comments were invited for 60 days. Comments were received from 435 Sources, with 393 coming from private sources, 15 from attorneys who did not identify their clients, 15 from business sources, including 5 from filing services, 7 from Federal agencies, 3 from associations and 2 from State and local agencies. Several of the comments requested an extension of the comment period. Even though the comment period was not extended, all comments received were considered.

General Comments

The largest number of comments were opposed to any change in the simultaneous oil and gas leasing system and suggested that the proposed rulemaking be withdrawn. Several of these general comments raised objections to the change in the timing of the drawings, the increase in the size of the lease areas, the requirement that each entry form be personally signed and the refusal to accept personal checks as remittances. There were some comments that supported the changes and recommended adoption of the proposed rulemaking in final form. All of the comments supported the simultaneous oil and gas leasing system and wanted it retained in one form or another. A recent comment was concerned that the final rulemaking would improperly incorporate changes that are needed to counter abuses discovered as a result of the recent investigation of the simultaneous oil and gas leasing system. The final rulemaking will consider only those changes that were part of the proposed rulemaking. Changes needed in the simultaneous leasing regulations to counter abuses discovered as a result of the current investigation of the simultaneous oil and gas leasing system were the subject of a recent rulemaking and are not part of this rulemaking. This comment also wanted to be sure that there had been no *ex parte* communications in connection with this rulemaking. Every effort has been made to assure that no *ex parte* communications have occurred concerning this rulemaking and that all of the procedures of the Administrative Procedures Act have been properly followed during the promulgation of the rulemaking. The Department of the Interior is satisfied that this effort has been successful.

Specific Comments

In addition to the general comments, a large number of comments were directed at specific sections of the proposed rulemaking. These specific comments will be dealt with on a section-by-section basis, with only those sections that received comments or have been extensively amended being discussed.

Definitions—A few comments suggested that the "rule of approximation" be retained as a term in the definition section. Two of the comments recommended that the rule be retained primarily for its utility in competitive leasing situations. The rule has never been applicable to competitive leasing.

The rule is unnecessary for future noncompetitive leasing the rulemaking provides a substantial increase in the maximum lease size. The definition has been deleted from the final rulemaking.

The definition of the term "sole party in interest" has been changed editorially, but not substantively, to be consistent with this rulemaking.

A definition of the term "person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program" has been added to the final rulemaking in response to questions concerning the use of this phrase in the proposed rulemaking.

Acreage Limitations—Section 3101.1-5 has been changed editorially, but not substantively, to be consistent with this final rulemaking.

Availability of Lands—Sections 3101.1-1 and 3101.2-1 have been changed to eliminate references to the size of leases. This information is set forth in those specific sections which describe the individual leasing programs, thus eliminating redundancy.

Section 3101.2-1 has been further amended to describe the availability of acquired lands in a manner parallel to section 3101.1-1 regarding public domain lands. Other nonsubstantive changes have been made in both sections for clarity.

Who May Hold Interest—Paragraph (a)(2) of section 3102.1 received two comments which were concerned with the deletion of the last sentence of the existing regulation. This sentence required the denial of an application to any corporation which has any "appreciable percentage" of its stock held by aliens who are disqualified by law from holding interests in leases. Some of the comments were concerned that the deletion could be interpreted to disqualify a corporation from holding leases if any percentage of its stock is owned by nonqualified aliens. The interpretation the comments wish to avoid is a correct one. There is not now, nor has there been under the existing regulation, any *de minimus* exception for unqualified alien ownership. The deletion eliminates the basis for the mistaken belief that such an exception exists. The Bureau of Land Management does, however, normally require corporations to disclose the citizenship of only those stockholders owning more than 10 percent of the corporation's stock (see 3102.2-5).

Paragraph (b), relating to bona fide purchasers, received several comments which pointed out that the proposed rulemaking went further than the applicable statute (30 U.S.C. 184) by placing the burden of proof of establishing bona fides on the purchaser claiming such protection. The language of the proposed rulemaking has been modified to more closely reflect the statute which places the burden of establishing a prima facie case that the assignee of a challenged lease is not a bona fide purchaser on the United States in order for a hearing to be held. Neither the statute nor the regulations prohibit administrative inquiry into the bona fides of any lessee.

Some comments on this section also objected to language that places all purchasers on notice as to the contents of the lease case file. Other comments approved this requirement as a means of tightening title security and because the assignee should be informed of all rights, responsibilities and restrictions on the lease. The position of the

Department of the Interior, confirmed by the U.S. Court of Appeals for the Tenth Circuit, is that a purchaser is on notice as to all publicly available records pertaining to the lease and the lands covered by the lease. The language of the rulemaking has been expanded to reflect that the purchaser is on notice as to all such records.

The bona fide purchaser provisions have been moved to section 3108.3(c) through (e) of the final rulemaking.

Statements of Qualifications—General Requirements—Some comments suggested that the requirement in the proposed rulemaking that qualification statements, applications and offers be "manually signed" did not exclude the use of rubber stamped signatures. In order to make it clear that only personal, handwritten signatures will be permissible, language has been added to the final rulemaking requiring "holographically (manually) signed" statements, applications and offers.

As one comment pointed out, this change will overturn the rule established by the Interior Board of Land Appeals (IBLA) in *Mary I. Arata*, 4 IBLA 201 (1971). The IBLA held that existing regulations were drafted in such broad terms as to allow mechanically affixed signatures. The outgrowth of this decision has been that other Bureau of Land Management regulations have been interpreted to allow other than holographic signatures. In interpreting one such regulation, IBLA recognized that by following its decision in *Arata* it exposed the Department of the Interior "to another method by which the reasonable efforts of the Department to ensure fair play and compliance with the law can be made more difficult." However, under the language of then existing regulations, IBLA felt constrained to follow its earlier decision while deploring "the proclivity of some leasing services to exploit every conceivable loophole in the letter of the regulation without any discernable regard for their spirit and intent". *W. H. Gilmore*, 41 IBLA 25 (1979). The final rulemaking is intended to overturn the *Arata* rule.

Personal signatures help to eliminate fraud against the United States and those who participate in the leasing system through agents. In may cases, those who participate through agents have limited exposure to materials issued by the Department of the Interior concerning the leasing program. In view of these factors, and in order to impress on the applicant the seriousness of the leasing procedures and the statements the applicant is required to certify, it is appropriate to require a holographic signature.

One comment suggested that the Department of the Interior's only interest in requiring a handwritten signature is to ensure that the applicant receives the lease and that this requirement can be met by a personal signature on the lease form and that, therefore, signatures on other forms are redundant. As pointed out above, this is but one of the Department's interests in requiring holographic signatures and no change has been made in the requirement.

Language has also been added to the section cross-referencing the provisions of section 1821.3, which describes the significance of making the statements required by subpart 3100.

Section 3102.2–7 of the proposed rulemaking has been renumbered as section 3102.2–1 in the final rulemaking and rewritten to state more clearly the liberalization of the policy of allowing qualification statements to be placed on file and thereafter to be referred to by serial number without resubmittal. Additional language describing the significance of the use of a serial number has been added in order to avoid future confusion. All the comments on these aspects of the section were favorable.

Some comments suggested that the requirement of the proposed rulemaking that all statements of qualifications be kept current was too great a burden to place on an applicant. The provision has not been changed in the final rulemaking. No application or offer will be accepted unless the statements of qualifications are fully up to date in order to assure compliance with existing law and regulations.

The requirement in the proposed rulemaking that grants of authority be of a specific duration drew mixed comments. Some of the comments felt that an open ended grant of authority should be allowed, while other comments expressed a preference for some fixed time period for a grant of authority. The final rulemaking adopts a two year limit on the duration for grants of authority to an agent. Two years was selected in order to reduce the burden on those who employ agents while allowing the Bureau of Land Management to clear its files of outdated material.

All Applicants and Offerors—Section 3102.2–2, titled "Individuals" in the proposed rulemaking, has been renumbered and redrafted in the final rulemaking for clarity. Some comments mistakenly believed that the language of the proposed rulemaking required a statement separate from the certification on the lease application. The language of the final rulemaking specifically dispels this concept.

Trusts and Guardians—Many comments were received on section 3102.2–2 of the proposed rulemaking, renumbered 3102.2–3 in the final rulemaking, which argued that revocable trusts should be permitted to be lessees and should be allowed to continue to acquire and hold Federal leases. As a result of the persuasive arguments presented in the comments, the ban on revocable trusts has been eliminated from the final rulemaking. In order to highlight a potentially improper filing arrangement, however, language has been added to section 3112.6–1(c)(4) of the final rulemaking to specifically warn against the filing of applications by both the grantor or those with powers of revocation and the trust for the same parcel.

Associations Including Partnerships—A few of the comments on section 3102.2–4 of the proposed rulemaking suggested that it was excessively burdensome to require that a complete list of the partners of a partnership, particularly a limited partnership, be furnished. In response to these comments, the final rulemaking has been amended to require a list of all general partners. This amendment eases the burden imposed on limited partnerships and provides the Bureau of Land Management with information it needs to identify prohibited filings. The amendment is consistent with the requirement that corporations submit a list of corporate officers.

Another change in this section, made in response to comments, gives those owning more than 10 percent of an association an additional 15 days during which to submit statements of their qualifications.

Corporations—Many comments objected to the requirement in the proposed rulemaking that the percentage of stock owned by aliens be revealed. Some of the comments suggested that the requirement is too severe, while other comments suggested that it did not require enough disclosure of stock ownership by aliens. This requirement, which has been retained in the final rulemaking, is the same as that now in existing regulations. A discussion of the question of alien ownership is covered earlier in this preamble.

One comment recommended that the term "corporate officers" be broadened to specifically include corporate directors. This comment has not been adopted because the rulemaking is designed to cover only those normally considered as corporate officers.

Another comment suggested that stockholders owning more than 10 percent of the corporate stock should be required to reveal the percentage of the stock that they hold. The Department of the Interior needs this information for proper acreage attribution and the final rulemaking incorporates the suggested change.

A change has been made in this section similar to the change in the association section, allowing an additional 15 days for the submission of statements of their qualification by those owning more than 10 percent of the stock of a corporation.

Agents—Some comments were received that suggested that agency statements be submitted at the time a lease application or offer is filed rather than within 15 days following such filing. These comments have been partially adopted. The final rulemaking eliminates the provision allowing a 15-day period for the filing of individual statements while retaining the 15-day period for the filing of uniform agreements.

Several comments recommended that the attorney-in-fact provisions be eliminated because other changes in the proposed rulemaking rendered them unnecessary. After careful consideration of the comments, the recommendation has been adopted and the provisions eliminated from this section of the final rulemaking.

This section has also been rewritten in the final rulemaking to properly shift the responsibility for providing the necessary information concerning the agency relationship to the applicant.

Sole party in interest—A few of the comments misconstrued the proposed rulemaking as requiring a separate statement listing other parties in interest to accompany each application or offer. There was no intention to alter the procedure in existing regulations that allows other parties in interest to be listed directly on the lease application or offer. The rule does require, however, that any application bearing the names of multiple parties must be accompanied or followed by a separate statement setting forth the nature of the agreement between them. The final rulemaking has been rewritten to clarify this point and, hopefully, remove any misinterpretation.

Other showings of qualifications—One comment on section 3102.3 of the proposed rulemaking pointed out that this section permits the Bureau of Land Management total license to request from any applicant additional information that could be used to show compliance with the regulations on this subject. Specifically, the comment was concerned that the Bureau would abuse this broad discretion. The comment went on to suggest language to limit the information which could be requested. While it is possible that some Bureau offices might have been overzealous on occasion in the use of this authority, wide discretion is needed in order to insure compliance with the regulations and the statute. Even though there has been no change made in this section in the final rulemaking, the Bureau's operating policy instructions will make it clear that only that data needed to insure compliance will be requested.

Relinquishment, Termination, Cancellation—This subpart has been rewritten to bring the provisions of the existing regulations into conformance with the language of this final rulemaking. A new section on cancellation, section 3108.2–2, has been included in the final rulemaking. This section is a restatement of existing procedures. Also included in the section are the bona fide purchaser provisions which were part of section 3102.1(b) of the proposed rulemaking and have been discussed earlier in the preamble.

Acreage Limitations—Many comments were received on section 3110.1–3 of the proposed rulemaking and its proposal to increase the maximum lease size from 2,560 acres to 10,240 acres. Several of the comments were concerned that the Bureau of Land Management would withhold smaller parcels from leasing in order to create parcels of the maximum size, thereby delaying leasing. Other comments were concerned that the proposed change would exclude participation by independent oil developers who might not be able to afford the larger rental payments required to hold the larger parcels. Along this same line, another group of comments expressed the concern that the higher cost of the larger parcels would exclude individual participants from participating in the simultaneous leasing system. A few comments pointed out that the entire acreage of a larger lease could be extended beyond the primary term by a single well. Some comments suggested that splintered ownership patterns encourage development while others suggested that the change would be helpful to developers by eliminating difficult consolidation steps. One comment observed that the change would be particularly beneficial in high risk, remote areas, which had not previously attracted industry interest. After careful consideration of the comments and a restudy of the proposed rulemaking and the Department of the Interior study that lead to the proposal, the provision on increase of lease size has not been changed in the final rulemaking.

The consolidation of leases into larger parcels has as its purpose the encouragement of prompt exploration for, and development of the resource. As this is the reason for the provision, it will be the policy that leasing will not be delayed to create larger parcels if such delay means that exploration and development plans will be thwarted. A delay of even a single extra leasing cycle would not be justified if the delay would have such adverse impacts.

Those concerned that participants will be excluded from participation in the simultaneous leasing system, either as developers or speculators, are overly concerned about the impact of the acreage change. The present average lease size on Federal lands is 850 acres. This average lease size is not expected to increase significantly as a result of the increased maximum lease size provided in this rulemaking. Future leasing will not, on the whole, require a significantly greater expenditure than past leasing. Because of the scattered nature of Federal land ownership in most areas, parcels of maximum size will not be assembled very often. The Secretary of the Interior retains the discretion to issue leases for less than the maximum acreage. Parcels will be combined where reasonable unless there are significant geologic or geographic reasons for not doing so.

Several comments suggested that the six mile square rule, as opposed to the four mile square rule set forth in the proposed rulemaking, be retained. The comments suggested that a four mile rule was unnecessarily restrictive, particularly with the increase in maximum lease acreage.

After a careful analysis of the comments, the four mile square rule has been abandoned in the final rulemaking in favor of the six mile square rule. Additional flexibility has been added through an amendment of the final rulemaking for leasing of certain acquired lands outside a six mile square.

Availability of Lands—Section 3112.1–1 has been amended to make clear that the simultaneous oil and gas leasing system may be used for the leasing of lands other than those specifically covered by the existing language of the section.

Posting of Notice—Most of the comments on section 3112.1–2 opposed the proposed change in the proposed rulemaking changing the drawings from monthly to quarterly citing potential delays in the leasing of lands and the adverse effect on public participation in the leasing process. The reasons for proposing quarterly drawings were to

allow for the consolidation of parcels and to allow for an extension of the filing period from 5 to 15 working days in order to overcome the difficulties some participants experienced in meeting the 5 day requirement. The final rulemaking is a compromise. The simultaneous leasing system will be on a bi-monthly basis rather than on a quarterly basis. At the same time, the 15 day rule that was soundly applauded by the comments is retained. This will permit filings to be accepted from the start of business on the first working day of January, March, May, July, September and November, until the close of business on the 15th working day of the month.

How to File an Application—One of the changes made in this section, section 3112.2–1, is the changing of the name "drawing entry card" to "simultaneous oil and gas lease application." This change is consonant with the plans to automate the program, including the selection process, thereby eliminating manual drawings. All references to "drawings" on forms will be eliminated.

Paragraph (a) of section 3112.2–1 has been expanded to include a general description of the leasing procedure. Applications will be accepted and subjected to a random selection process in order to determine the first applicant. That applicant, if qualified, will be entitled to submit a lease offer on a form approved by the Director, Bureau of Land Management, subject to the stipulations specified in the posted list and those later determined to be necessary.

Some of the comments on this section suggested that the requirement that applications be "manually signed in ink" did not exclude the use of a rubber stamp for signatures. In order to make it clear that only personally handwritten signatures will be accepted, the final rulemaking has been changed to require "holographically (manually) signed" applications.

A few comments suggested that the requirement for a handwritten signature is an unnecessary burden for applicants. As set out earlier in the preamble, the Department of the Interior has valid reasons for keeping this requirement as part of the final rulemaking.

A few comments recommended that provision be made in the final rulemaking for those applicants who are physically unable to write their own name so that they can participate in the leasing system. No change has been made in this section because persons who are physically incapacitated may use an agent.

In response to suggestions in the comments, the requirement that the lease application be signed and fully completed by a single individual has been deleted from the final rulemaking.

Most of the comments were in favor of the requirement in the proposed rulemaking that the lease application bear the address of the applicant and not the address of a filing service or other agent.

One comment suggested that the requirement that the application bear the address of the applicant was insensitive to the needs of those who participate in the leasing system through filing services. On the contrary, the change will protect clients of filing services from being defrauded by unscrupulous filing services. Moreover, the change is sensitive to the needs of the oil industry which often has difficulty contacting a lessee because only the address of the filing service appears on the application. Balanced against the potential for fraud and the often-voiced concerns of segments of the oil industry, the inconvenience to a few participants is acceptable. The requirement that a lease application bear the address of the applicant has been retained in the final rulemaking.

Filing Fees—Most of the comments on this section opposed the requirement of the proposed rulemaking that fees be paid by guaranteed remittance on the basis that it was an additional burden on the public. As stated in the preamble to the proposed rulemaking, this requirement is necessitated by the large amount of uncollectable payments which the Bureau of Land Management receives each month. The final rulemaking contains the requirement that fees be paid in the form of guaranteed remittances.

A few comments on this section suggested an increase in the filing fee. The increase is not warranted at this time and the final rulemaking does not adopt the suggestion.

Selection Procedures—One comment on section 3112.3–1 of the proposed rulemaking suggested that the Bureau of Land Management be required to notify successful applicants within 30 days of their receipt of priority. Normally, notification is received in a shorter time than 30 days. Therefore, this change is not warranted and has not been included in the final rulemaking.

Another comment recommended language requiring a refund of rental if the lands offered for lease are determined to be within a known geological structure of a producing oil or gas field prior to lease issuance. This change is not necessary since refunds of this kind are now made under existing regulations and will continue in the future.

Another change made in this section of the final rulemaking is that whenever the word "drawings" was used in the proposed rulemaking, it has been changed to the word "selections" in order to encompass those selections determined by computer rather than by drawing.

Reselection Procedures—The recently issued redrawing regulation has been editorially changed, without substantive effect, in this final rulemaking to make it consistent with the changes made by this final rulemaking.

The Lease Offer and Payment of First Year's Rental—Section 3112.4–2 of the proposed rulemaking, renumbered section 3112.4–1 in the final rulemaking, required that the lease offer be signed and the first year's rental be submitted by the lease applicant in order to increase an applicant's involvement and reduce the influence of agents in the process. Many of the comments approved this change. Some, however, found the change to be an undue burden upon applicants. In order to provide greater flexibility for the leasing system, the final rulemaking has been changed to allow an attorney-in-fact to sign the offer and submit the first year's rental if the requirements of the section are followed.

Acceptance of Lease Offer—Several of the comments on section 3112.4–3 of the proposed rulemaking, renumbered section 3112.4–2 in the final rulemaking, recommended that the final rulemaking require the issuance of a lease within 30 to 60 days of receipt of a lease offer. Unfortunately, proper management of the public lands and their resources sometimes requires a longer delay. Therefore, this recommendation has not been adopted as part of the final rulemaking.

Restriction on transfer—Several of the comments on section 3112.4–4 of the proposed rulemaking, renumbered section 3112.4–3 in the final rulemaking, expressed the view that the prohibition on agreements to assign a lease until lease issuance or 60 days after the establishment of priority, whichever is sooner, was unenforceable. The provision was not intended to impose an additional enforcement burden on the Federal Government. The prohibition was designed to protect the lease applicant and the industry by establishing a cooling-off period during which all interested parties will have an equal opportunity to negotiate for the lease. Other comments were concerned that exploration would be delayed because operators will be temporarily prohibited from putting together a lease play.

The provision was designed to be self-enforcing by providing a lessee with an incentive to void the agreement when it is discovered to be to his/her advantage. As one comment pointed out, the incentive for a lessee to void an agreement would be destroyed by the penalty provision in the proposed rulemaking that would result in the cancellation of the lease if the agreement for the transfer of the lease did not meet the time requirements set by the regulations. For this reason, this section of the final rulemaking has been amended to provide for disapproval of an assignment that was the subject of an agreement that does not comply with the provisions of this section.

One comment wanted to know the meaning of the term "option" as it is used in this section. The term "option" as it is used in section 3112.4–3 of the final rulemaking has the same meaning as the term has in 30 U.S.C. 184(d).

Rejection of an Application, Rejection of an Offer, Cancellation of Leases—The comments on these sections, sections 3112.6–1 and 3112.6–2 of the proposed rulemaking, included one which objected to the penalizing of an applicant for the activities of the applicant's filing service. This comment was rejected because an application that is illegally filed should be rejected, whether filed by an applicant or by an applicant's agent. An applicant is responsible for the actions of the agent (filing service) he/she chooses to employee. Otherwise, the section would be unenforceable.

The provisions covering rejection of applications, rejection of lease offers and cancellation of leases have been separated into three sections in the final rulemaking, rather than two as in the proposed rulemaking, to avoid confusion. Further, the language of the sections has been modified for clarity and to provide a better statement of the scope of prohibited activities.

Availability of Lands Not Leased Through Drawing—A few comments suggested that the liberalized technique for removing unleased lands from simultaneous oil and gas leasing contained in section 3112.7 of the proposed rulemaking should not operate automatically. In response to these comments, the language of the section has been changed to specifically allow for an exercise of discretion by the State Director of the appropriate Bureau of Land Management office.

The new simultaneous oil and gas lease application form is subject to clearance by the Office of Management and Budget, in addition to approval by the Director as provided in this final rulemaking.

This rulemaking will be effective less than 30 days after publication in the **Federal Register** for good cause as described below. In Order No. 3051 (45 FR 30553), the Secretary of the Interior ordered the resumption of leasing when certain modifications specified in his April 7, 1980, decision were completed and revoked suspension of onshore oil and gas leasing effective June 16, 1980. Under the Secretary's decision of April 7, 1980, this rulemaking must be effective in order to resume the simultaneous leasing system. This rulemaking does contain provisions increasing the maximum offer and lease size from 2,560 acres to 10,240 acres as well as new qualification procedures that also affect over-the-counter leasing, even though the regulation need not be effective in order to resume the over-the-counter leasing system.

If over-the-counter offers are accepted for filing on June 16, 1980, but these regulations are not effective for several days, considerable confusion is likely to occur, causing delays in the issuance of leases. If resumption of the over-the-counter leasing system is delayed until 30 days from publication, similar confusion is likely to occur.

Making these regulations effective June 16, 1980, will result only in benefit to participants in the over-the-counter leasing system by allowing them to file offers under the increased maximum acreage rule contained in this final rulemaking. This early effective date does not affect the simultaneous leasing system in any way, since under the rulemaking, no parcels may be posted for simultaneous applications until July 1, 1980, which is more than 30 days from the publication date.

The national interest requires the resumption of onshore oil and gas leasing in an orderly and responsible manner. By Order No. 3051, the Secretary of the Interior has clarified the impact of the leasing suspension and established June 16, 1980, as the target date for resumption of leasing. The benefits of maintaining this target date, as described above, far outweigh any benefit gained by allowing the full 30 days before this rulemaking becomes effective. The public interest is best served under these circumstances by making this rulemaking effective on June 16, 1980.

Editorial and language changes needed to clarify the rulemaking have been made.

The principal authority of this rulemaking is Charles E. Weller, Division of Onshore Energy Resources, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), and related laws, Part 3100, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

James W. Curlin,

Acting Assistant Secretary of the Interior.

May 20, 1980.

PART 3100—OIL AND GAS LEASING

1. Section 3100.0–5 is amended by revising paragraphs (b) and (d) to read as follows:

§ 3100.0–5 Definitions.

* * * * *

(b) "Sole party in interest" means a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to an application, offer or lease in which any other party has any of the interests described in this section. The requirements of disclosure in any application or offer of an applicant's or other parties' interest in a lease, if issued, reflect the policy that all applicants and other parties having an interest in simultaneously filed lease applications or offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means of maintaining adequate records of acreage holdings. An "interest" in the least includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the application or offer is filed, is deemed to constitute an "interest" in such lease.

* * * * *

(d) "Person or entity in the business of providing assistance to participants in a

Federal oil and gas leasing program" means those offering services for consideration in connection with the acquisition of Federal oil and gas leases. Included in this definition are those enterprises, commonly known as filing services, which sign, formulate, prepare, offer advice on formulation or preparation, mail, deliver, receive mail or otherwise complete or file lease applications or offers for consideration. Excluded from the definition are those services which only tangentially relate to Federal oil and gas lease acquisition, such as general secretarial assistance, or general geologic advice which is not specifically related to Federal lease parcels or leasing.

2. Section 3100.5–3 is amended to read as follows:

§ 3100.5–3 Period of option.

Except as provided in § 3112.4–3 of this title, an option taken on a lease application or offer may be for a period of time until issuance of the lease and 3 years thereafter. Where options are sought for longer periods, an application shall be filed with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

3. Section 3101.1–1 is amended to read as follows:

§ 3101.1–1 Availability of lands.

(a) All public domain lands subject to disposition under the Act may be leased by the Secretary of the Interior. Lands within a known geologic structure of a producing oil or gas field shall be leased only by competitive bidding to the highest responsible qualified bidder. Other public domain lands shall be leased only noncompetitively to the first qualified applicant.

(b) Public domain lands not subject to leasing:

(1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves and national petroleum reserves.

(5) Lands within 1 mile of naval or national petroleum or helium reserves shall not be leased unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

(c) The availability of acquired lands for oil and gas leasing is set out in § 3101.2–1 of this title.

4. Section 3101.1–5 is amended by revising paragraph (c)(3)(iii) to read as follows:

§ 3101.1–5 Acreage limitations.

* * * * *

(c) * * *

(3) * * *

(iii) If any party files an application for inclusion in the selection process under Subpart 3112, he/she shall be charged with the acreage thereof only if the application is successfully selected. If that application causes his/her to exceed the acreage limitation, the application shall be rejected.

* * * * *

5. Section 3101.2–1 is amended to read as follows:

§ 3101.2–1 Availability of lands.

(a) All acquired lands subject to disposition under the Act may be leased by the Secretary of the Interior. Lands within a known geological structure of a producing oil or gas field shall be leased only by competitive bidding to the highest responsible bidder. Other acquired lands shall be leased only non-competitively to the first qualified applicant.

(b) Acquired lands not subject to leasing include lands:

(1) Acquired for the development of their mineral deposits;

(2) Acquired by foreclosure or otherwise for resale;

(3) Reported as surplus under the Surplus Property Act of October 3, 1944 (50 U.S.C. 1611 et seq.);

(4) In incorporated cities, towns and villages;

(5) In national parks and monuments;

(6) Within naval petroleum and oil shale reserves and within the national petroleum reserves; or

(7) Which are tide lands, submerged coastal lands, within the continental shelf adjacent or littoral to any part of lands within the jurisdiction of the United States.

(c) The availability of public domain lands for oil and gas leasing is set forth in § 3101.1–1 of this title.

6. Section 3102.1 is revised to read as follows:

§ 3102.1 Who may hold interests.

(a) *General.* Leases may be acquired and held only by citizens of the United States; associations (including partnerships) of such citizens, corporations organized under the laws of the United States or of any State or territory, thereof, or municipalities.

(b) *Aliens.* Leases or interests therein may be acquired and held by aliens only through stock ownership, stock holding and stock control; and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States.

(c) *Minors.* Leases shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf.

7. Section 3102.2 and § 3102.2–1—3102.2–7 are revised to read as follows:

§ 3102.2 Statements of qualifications.

§ 3102.2–1 General requirements.

(a) *Signatures.* All statements required by the regulations in this subpart shall be holographically (manually) signed in ink. Rubber stamped or mechanically affixed signatures are not acceptable.

(b) *Certifications.* All statements required by the regulations in this subpart are subject to the provisions of § 1821.3 of this title.

(c) *Filing statements for reference.* A statement of the qualifications of a trust or guardianship (§ 3102.2–3), association (§ 3102.2–4), corporation (§ 3102.2–5), agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2–6) or municipality (§ 3102.2–9) may be placed on file with a Bureau of Land Management office described in § 1821.2–1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement. Such a reference shall constitute certification that the statement complies with paragraph (b) of this section. Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current.

§ 3102.2–2 All applicants and offerors.

The applicant, offeror, or agent as provided in § 3102.2–6 of this title, shall certify as to age, citizenship and compliance with the acreage limitations set forth in § 3101.1–5 and 3101.2–4 of this title on the lease offer, or on the lease application if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–3 Trustees and guardians.

If the offeror or applicant is a guardian or trustee filing on behalf of a ward or beneficiary, the offer, or application if leasing is pursuant to subpart 3112 of this title, shall be accompanied by a certified copy of the court order, or other document, establishing the relationship and authorizing the guardian or trustee to fulfill all obligations of the lease or arising thereunder. A statement as to the age, citizenship and as to compliance with the acreage limitations set forth in §§ 3101.1–5 and 3101.2–4 of this title by the guardian or trustee and by each ward or beneficiary shall be signed by the guardian or trustee and shall accompany each offer or application if leasing is pursuant to subpart 3112 of this title. The trustee of a revocable trust shall also submit a statement identifying the grantor of the trust and persons with the power of revocation.

§ 3102.2–4 Associations including partnerships.

(a) An association which seeks to lease shall submit with its offer, or application if leasing is in accordance with subpart 3112 of this title: (1) a certified copy of its articles of association or partnership; (2) a statement that it is authorized to hold oil and gas leases; and (3) a complete list of all general partners or members together with a statement as to their citizenship and identifying those authorized to act on behalf of the association or partnership in matters relating to Federal oil and gas leasing.

(b) A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of §§ 3101.1–5 and 3101.2–4 of this title, shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–5 Corporations.

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with subpart 3112 of this title, a statement showing: (1) The State in which it is incorporated; (2) that it is authorized to hold oil and gas leases; (3) a complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing; (4) the percentage of voting stock and of all the stock owned by aliens; and (5) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation.

(b) A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth the stockholder's citizenship, percentage of corporate stock owned or controlled and compliance with the acreage limitations of §§ 3101.1–5 and 3101.2–4 of this title shall also be filed with the proper Bureau of Land Management office not later than 15 days after the filing of an offer, or application if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–6 Agents.

(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: a power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement. (b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with subpart 3112 of this title.

§ 3102.2–7 Sole party in interest.

(a) The applicant shall set forth on the lease offer, or lease application if leasing is in accordance with subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer or lease, if issued.

(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with subpart 3112 of this title. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1–5 and 3101.2–4 of this title.

§ 3102.8 [Amended]

8. Section 3102.8 is amended by changing the section number to § 3102.2–8 and inserting the words "or applicant" after the word "offeror" wherever it occurs and by deleting from paragraph (a)(2) the words "under §§ 3102.1 and 3102.2–1," and amending paragraph (b)(2) by replacing the words "under §§ 3102.1 and 3102.2–1" with the words "of an offeror or applicant."

§ 3102.9 [Amended]

9. Section 3102.9 is amended by deleting the second sentence thereof and by changing the section number to §§ 3102.2–9.

10. Section 3102.3 is amended to read as follows:

§ 3102.3 Other showings of qualifications.

The applicant, offeror or agent may be required to submit additional information to the Bureau of Land Management to show compliance with the regulations of this part and the Act.

§ 3102.4–3102.7 [Removed]

11. Sections 3102.4 through 3102.7, inclusive, are deleted in their entirety.

12. Section 3103.1–1 is amended to read as follows:

§ 3103.1–1 Form of remittance.

All remittances shall be by cash, money order, check, certified check, bank draft or bank cashier's check, except as provided in § 3112.2–2 of this title.

13. Section 3103.2–1(a) is amended to read as follows:

§ 3103.2–1 General statement.

(a) *Offers and applications.* Each lease offer under subpart 3111 of this title and each filing for a parcel under subpart 3112 of this title shall be accompanied by a filing fee of $10. Such fee shall be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

* * * * *

14. Subpart 3108 is retitled as follows:

Subpart 3108—Relinquishment, Termination, Cancellation

15. Section 3108.2–2 is deleted in its entirety.

16. Section 3108.2–3 is deleted in its entirety.

17. Section 3108.3 is revised to read as follows:

§ 3108.3 Cancellation; bona fide purchasers.

(a) Whenever the lessee fails otherwise to comply with any of the provisions of the Act, of the regulations issued thereunder or of the lease, such lease may be canceled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to the lessee in accordance with section 31 of the Act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may at any time prior to the anniversary date of such lease and the accrual of rental elect to subject the lease to the automatic termination provisions of this section by notifying, in writing, the authorized officer of the proper office to that effect.

(b) A lease known to contain valuable deposits of oil or gas may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the Act.

(c) A lease or interest therein shall not be canceled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers are on notice as to all pertinent regulations and all Bureau of Land Management records pertaining to the lease and the lands covered by the lease.

(d) Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation of any provisions of the Act, these regulations or the lease terms any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(e) If during any such proceeding a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her interest thereto, or if such rights are suspended by order of the Secretary of the Interior pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

18. Section 3110.1–3 is amended to read as follows:

§ 3110.1–3 Acreage limitation.

(a) *Public domain.* An offer may not include more than 10,240 acres. The lands in the offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan has been approved as to form by the Director of the Geological Survey or where the land is surrounded by lands not available for leasing under the Act.

(b) *Acquired lands.* An offer may not include more than 10,240 acres. An offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer may exceed the 6 mile square limit if:

(1) the lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) the tract desired is described by the acquisition tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area.

19. Section 3110.1–4 is amended by revising paragraph (b) to read as follows:

§ 3110.1–4 Withdrawal of offer or application.

* * * * *

(b) *Simultaneous filings.* An applicant may withdraw his/her simultaneous oil and gas lease application prior to selection, except as provided in § 3112.3–2 of this title. A simultaneous oil and gas lease offer may be withdrawn in the same manner as a regular offer, as described in paragraph (a) of this section.

20. Section 3110.1–6 is amended by revising paragraph (b) to read as follows:

§ 3110.1–6 Determination of priorities.

* * * * *

(b) *Simultaneous filings.* If more than one lease application is filed for a parcel under the provisions of subpart 3112 of this title, their priority shall be determined by a random selection.

§ 3111.1–1 [Amended]

21. Section 3111.1–1(e)(2) is deleted. Paragraphs (e)(3)–(5) are renumbered (e)(2)–(e)(4).

22. Subpart 3112 is revised to read as follows:

Subpart 3112—Simultaneous Filings

Sec.

3112.1 Parcels.
3112.1–1 Availability of lands.
3112.1–2 Posting of notice.
3112.2 How to file an application.
3112.2–1 Simultaneous oil and gas lease application.
3112.2–2 Filing fees.
3112.2–3 Qualifications.
3112.3 The first qualified applicant.
3112.3–1 Selection procedures.
3112.3–2 Reselection procedures.
3112.4 Lease issuance.
3112.4–1 The lease offer and payment of the first year's rental.
3112.4–2 Acceptance of lease offer.
3112.4–3 Restriction on transfer.
3112.5 Unacceptable filings.
3112.6 Adjudication.
3112.6–1 Rejection of an application.
3112.6–2 Rejection of an offer.
3112.6–3 Cancellation of leases.
3112.7 Availability of unleased lands.

§ 3112.1 Parcels.

§ 3112.1–1 Availability of lands.

All lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with this subpart. Other lands which are not within a known geological structure of a producing oil or gas field may be leased in accordance with this subpart.

§ 3112.1–2 Posting of notice.

At the start of business on the first working day of January, March, May, July, September and November, a list of the lands for which applications shall be received shall be posted in the proper Bureau of Land Management State Office. The list shall include a notice stating that such lands are subject to the filing of lease applications from the time of such posting, until the close of business on the fifteenth working day thereafter. The available lands shall be described in leasing units identified by parcel numbers. The lands shall also be described by subdivision, section, township and range if the lands are surveyed or officially protracted; or if unsurveyed, by metes and bounds. The

list shall include a statement as to, and a copy of, any standard or special stipulation applicable to each parcel. Copies of the posted notice may be purchased by mail or over the counter from the proper office.

§ 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. The first applicant for a lease, as determined under the regulations in this subpart, who is qualified to hold a lease under the Act and the regulations in this title shall be entitled to submit an offer for the lease as described in § 3112.4–1 of this title.

(b) The application shall be holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant. Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.) Machine or rubber stamped signatures shall not be used.

(c) The name of only one citizen, association, corporation or municipality may appear as applicant on any application. The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period.

(d) The application shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purpose provided in § 3112.4–1 of this title. The applicant shall not use the address of any other person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system.

(e) The parcel applied for shall be identified by the proper parcel number, including the State prefix, as shown on the posted notice.

(f) No person or entity shall hold, own or control any interest in more than one application for a particular parcel.

(g) The properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management.

§ 3112.2-2 Filing fees.

(a) Each filing shall be accompanied by a $10 filing fee. The filing fee shall be paid in U.S. currency. Post Office or bank money order, bank cashier's check or bank certified check, made payable to the Bureau of Land Management. Checks drawn on foreign banks shall not be accepted.

(b) A single remittance is acceptable for a group of filings. Failure to submit sufficient fees to cover all filings shall render unacceptable the entire group of filings submitted with that remittance. Such filings shall be returned to the applicant in accordance with § 3112.5 of this title.

(c) An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. In such a case, the amount of the remittance shall be a debt due to the United States which shall be paid before the applicant is permitted to participate in any future selection.

§ 3112.2-3 Qualifications.

Evidence of qualifications to hold Federal oil and gas leases shall be filed in accordance with subpart 3102 of this title.

§ 3112.3 The first qualified applicant.

§ 3112.3-1 Selection procedures.

(a) Three applications shall be randomly selected for each numbered parcel. The order in which they are selected shall fix the order in which the successful applicant shall be determined. Where only 2 applications are filed for a particular parcel, their priority shall be established through the selection process. A single filing shall automatically be considered the successful application.

(b) The results of the selection process shall be posted in the proper Bureau of Land Management office where the selection was held.

(c) All unsuccessful applicants shall be notified in writing or by return of their applications.

(d) Successful applicants shall be notified in accordance with § 3112.4–1 of this title.

(e) When the lease is issued to the first qualified applicant, unsuccessful applicants selected with lower priority for the lease shall be notified in writing or by return of their application.

§ 3112.3-2 Reselection procedures.

If a properly filed application is omitted from the selection process, a new selection shall be held. An omitted application may not be withdrawn by the applicant. The new selection shall consist of the omitted application(s) and the number of blank applications equal to the number of applications which were included in the first selection. Such selection shall be conducted in the same manner as the original selection. If the omitted application is not selected first, second or third priority in the new selection, the priority established in the original selection shall stand. However, if an omitted application is slected in the first, second or third priority, it shall displace the application selected with the same and lower priorities in the original selection. No applications chosen in the first selection shall be eliminated from priority as a result of the selection of an omitted application in the reselection. The number of priorities shall be increased as necessary.

§ 3112.4 Lease issuance.

§ 3112.4-1 The lease offer and payment of first year's rental.

(a) The lease agreement, consisting of a lease form approved by the Director, Bureau of Land Management, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental. Only the personal hand-written signature of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, in ink shall be accepted. The first year's rental shall be paid only by the applicant, or his/her attorney-in-fact as described in paragraph (b) of this section. The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease.

(b) An attorney-in-fact may sign the lease offer and pay the first year's rental only if the power of attorney prohibits the attorney-in-fact from filing offers on behalf of any other participant; if the power of attorney specifically authorizes the attorney-in-fact to execute on behalf of the participant all offers, statements of interest and of holdings and other statements required, or which may be required, by the Act or the regulations; and if the power of attorney binds the participant to representations made on its behalf by the attorney-in-fact and waives any and all defenses which may be available to the participant to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney. Any attorney-in-fact signing a lease offer or paying the first year's rental on behalf of

the prospective lessee shall file, together with the offer and/or rental, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed over the personal handwritten signature of the prospective lessee in ink. Evidence of the applicant's physical handicap which precludes an ability to sign may be submitted in lieu of the applicant's signature on the power of attorney.

§ 3112.4-2 Acceptance of lease offer.

The signature of the authorized officer on the lease shall constitute the acceptance of the lease offer and the issuance of the lease by the United States.

§ 3112.4-3 Restriction on transfer.

No application, offer, lease or interest therein may be transferred or assigned prior to issuance of the lease as evidenced by the signing of the lease by the authorized officer on behalf of the United States as provided in § 3112.4-2 of this title. No agreement or option to transfer or assign such application, offer, lease or interest therein shall be made or given prior to the effective date of the lease or 60 days from the applicant's receipt of priority, whichever comes first. The existence of such an agreement or option shall result in disapproval of the subsequent assignment.

§ 3112.5 Unacceptable filings.

(a) Applications shall be examined prior to selection and the application or written notice, together with the filing fee, shall be returned to the applicant for any filing which is:

(1) Received prior to the beginning of the simultaneous filing period;

(2) Received after the closing of the filing period;

(3) Accompanied by an unacceptable remittance or insufficient filing fees;

(4) Filed in the wrong office;

(5) Filed without a parcel number or with a parcel number which is not on the current posted notice; or

(6) Filed for a parcel which is withdrawn by the Bureau of Land Management.

(b) Failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in this section or for any reason set forth in § 3112.6 of this title.

§ 3112.6 Adjudication.

§ 3112.6-1 Rejection of an application.

Rejection is an adjudicatory process which follows selection. Filing fees for rejected filings are the property of the United States and shall not be returned.

(a) *Improper filing.* Any application which is not filed in accordance with § 3112.2 of this title or any application which is unacceptable, as set forth in § 3112.5 of this title, shall be rejected. Misplacement of name or address or incomplete address on the face of form 3112-1 shall not be a basis for rejection until 30 days from posting the list of priority or return of the documents described in § 3112.4-1 of this title as undeliverable, whichever is later.

(b) *Unqualified applicants.* The application of any applicant who is unqualified or has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected.

(c) *Prohibited agreements, schemes, plans or arrangements.* Any agreement, scheme, plan or arrangement entered into prior to selection, which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein is prohibited and any application made in accordance with such agreement, scheme, plan or arrangement shall be rejected. Specifically:

(1) Any agreement, scheme, plan or arrangement which obligates the applicant to transfer any interest in the lease, if issued, to a third party; or which gives the third party a right of first refusal for the lease, if issued; or which obligates the applicant to use the services of the third party when assigning or transferring any interest in the lease, if issued; is prohibited is such an agreement, scheme, plan or arrangement exists between the third party and 2 or more applicants for the same parcel or if the third party files for the same parcel as the applicant;

(2) Any agreement, plan or scheme between any person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program and any potential assignee whereby such person or entity will seek to induce an assignment of any lease is prohibited;

(3) Filings by members of an association (including a partnership) or officers of a corporation, under any arrangement, agreement, scheme, or plan whereby the association or corporation has an interest in more than a single filing for a single parcel are prohibited; or

(4) Separate filings by a trustee or guardian in its own behalf and on behalf of one or more beneficiaries on the same parcel or, separate filings by a trustee or guardian on behalf of two or more beneficiaries on the same parcel or, separate filings by the grantor or person with the power of revocation of a revocable trust and the trust, are prohibited.

(d) *Failure to file an offer.* The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 of this title.

(e) *Illegal interests.* The authorized officer shall reject all filings which are made in accordance with any illegal agreement, plan, scheme or arrangement and shall take other appropriate actions including investigations for prosecution under 18 U.S.C. 1001.

§ 3112.6-2 Rejection of an offer.

(a) An offer shall be rejected if the application upon which it is based could have been properly rejected under § 3112.6-1 of this title.

(b) If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field.

§ 3112.6-3 Cancellation of leases.

In the event a lease has been issued on the basis of an application or offer which properly should have been rejected or, if any interest in any lease is owned or controlled directly or indirectly in violation of any of the provisions of the Act or regulations in this title, action shall be taken to cancel the interest or lease unless the rights of a bona fide purchaser, as provided for in § 3108.3(c) of this title, intervene. The Government may take action to cancel regardless of whether information showing the application or offer was rejectable is obtained or was available before or after the lease was issued.

§ 3112.7 Availability of unleased lands.

(a) Where, during the filing period, 10 or fewer applications are received for any parcel and no lease issues as a result of such filings, the lands in such parcels shall be subject to leasing only in accordance with subpart 3111 of this title.

(b) Where more than 10 applications are received for a particular parcel and all successful applicants for that parcel are rejected for any reason, the lands in such parcel shall be subject to leasing only in accordance with this subpart.

(c) If a parcel is made available 3 times on the posted list and no lease issues as a result of such posting, the lands in such parcels shall, in the discretion of the State Director of the appropriate Bureau of Land

Management office, be subject to leasing in accordance with subpart 3111 of this title.

(d) If lands are available in accordance with subpart 3111 of this title pursuant to paragraphs (a) and (c) of this section, they shall be opened for the filing of lease offers by notice on the next list of lands posted by the proper Bureau of Land Management office under § 3112.1–2 of this title.

23. Section 3120.1–4 is amended by changing the reference to "§ 3102.4–1" to "§ 3102.2–5."

[FR Doc. 80–15927 Filed 5–22–80; 8:45 am]

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Friday
May 23, 1980

Part IV

Department of Agriculture

Agricultural Marketing Service

Milk in the Alabama-West Florida Marketing Area; Hearing on Proposed Marketing Agreement and Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1093

[Docket No. AO-386]

Milk in the Alabama-West Florida Marketing Area; Hearing on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider a proposed milk order that would regulate the handling of milk in an area designated as the Alabama-West Florida marketing area. Associated Milk Producers, Inc., Montgomery, Alabama, requested the proposed order. The marketing area of the proposed order would include the State of Alabama and four counties in western Florida. Proponent contends that a milk order is needed to establish and maintain orderly marketing conditions and an effective pricing regulation for the marketing of milk in the area. The texts of the proposals to be considered are set forth in this document.

DATE: Hearing will convene June 23, 1980.

ADDRESS: Hearing will be held at the Holiday Inn East, Eastern Bypass & I–85, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5443.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at the Holiday Inn East, Eastern Bypass & I–85, Montgomery, Alabama, 36109 beginning at 1:30 p.m., local time, on June 23, 1980, with respect to a proposed marketing agreement and order, regulating the handling of milk in the Alabama-West Florida marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The hearing is for the purpose of:

(a) Receiving evidence with respect to economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and any appropriate modifications thereof;

(b) Determining whether the handling of milk in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is need for a marketing agreement or order regulating the handling of milk in the area; and

(d) Determining whether the proposed marketing agreement and order or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

The proposals, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Inc., Montgomery, Alabama: Proposal No. 1 [1]

General Provisions

Sec. .1 General provisions.

The terms, definitions, and provisions, in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.[2]

Definitions

Sec. .2 Alabama-West Florida marketing area.

The "Alabama-West Florida marketing area" hereinafter called the "Marketing area" means all territory within the boundaries of Alabama and the Florida counties of Escambia, Santa Rosa, Okaloosa and Walton, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties.

(a) Northern Zone: Lauderdale, Limestone, Madison, Jackson, Colbert, Lawrence, Franklin, Morgan, Marshall, De Kalb, Cherokee—all in Alabama.

(b) Central Zone (North): Marion, Lamar, Pickens, Winston, Walker, Fayette, Tuscaloosa, Cullman, Jefferson, Bibb, Chilton, Blount, St. Clair, Shelby, Etowah, Talladega, Coosa, Calhoun, Cleburne, Clay, Tallapoosa, Randolph, Chambers—all in Alabama.

(c) Central Zone (South): Sumter, Choctaw, Washington, Greene, Hale, Marengo, Clarke, Perry, Dallas, Wilcox, Monroe, Autauga, Lowndes, Butler, Conecuh, Elmore, Montgomery, Pike, Crenshaw, Macon, Bullock, Lee, Russell, Barbour—all in Alabama.

(d) Southern Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Henry, Houston, all in Alabama, and the Florida counties of Escambia, Santa Rosa, Okaloosa and Walton.

Sec. .3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

Sec. .4 Plant.

"Plant" means the land, building, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities without stationary storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

Sec. .5 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted regulatory agency for fluid consumption or filled milk is processd or packaged and which has route disposition in the marketing area during the month.

Sec. .6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted regulatory agency for fluid consumption or filled milk is shipped during the month to a pool plant.

Sec. .7 Pool plant.

Except as provided in paragraph (c) of this section, "Pool plant" means:

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted regulatory agency for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to sec. .13 and that has route dispositions, except filled milk, in the marketing area during the month of at least the lesser of a daily average of 1500 pounds or 10 percent of

[1] The proposed order has been assigned to 7 CFR Part No. 1093. If an order later is recommended for adoption, the recommended order provisions will include the part no. designation for all sections of the order.

[2] The provisions of part 1000 (7 CFR Part 1000) are set forth immediately following Proposal No. 1.

receipts from dairy farmers, (including producer milk diverted from the plant but excluding milk received as diverted milk), handlers described in sec. .9(c) and other plants.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to sec. 13 during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant does not continue to meet the requirements of a duly constituted regulatory agency or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant; and

(3) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

Sec. .8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

Sec. .9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to sec. .13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

Sec. .10 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Received no Class I milk from sources other than his own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk;

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk.

Sec. .11 [Reserved].

Sec. .12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption, which milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in .9(c); or

(3) Diverted from a pool plant in accordance with Sec. .13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to sec. .44 (a) (8) (iii) and the corresponding step of sec. .44 (b);

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

Sec. .13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in sec. .9 (c); or

(c) Diverted by the operator of a pool plant or a cooperative association from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) In any month of March through July, not less than two days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of August through February, not less than six days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) In any month of August through February, the total quantity of milk so diverted during the month by a cooperative association shall not exceed

one-third of the producer milk that the cooperative association caused to be delivered to, and is physically received at, pool plants during the month;

(4) In any month of August through February, the operator of a pool plant that is not a cooperative association may divert any milk that is not under control of a cooperative association that diverts milk during the month pursuant to paragraph (c) (3) of this section. The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such plant during the month that is eligible to be diverted by the plant operator;

(5) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(6) The cooperative association shall designate the dairy farm deliveries that are not producer milk pursuant to paragraph (c) (5) of this section. If the cooperative association fails to make such designation, no milk diverted by it to a nonpool plant shall be producer milk.

(7) The operator of a pool plant shall designate the dairy farm deliveries that are not producer milk pursuant to paragraph (c) (4) of this section. If the operator of the pool plant fails to make such designation, no producer milk diverted by it to a nonpool plant shall be producer milk; and

(8) Diverted milk shall be priced at the location of the nonpool plant to which diverted.

Sec. .14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in sec. .40 (b) (1) from any source other than producers, handlers described in sec. .9 (c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in sec. .40(b)(1);

(c) Products (other than fluid milk products, products specified in sec. .40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in sec. .40(b)(1)) for which the handler fails to establish a disposition.

Sec. .15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Sec. .16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Sec. .17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

Sec. .18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing milk or milk products for, its members.

Sec. .19 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload point shall not be considered a plant except that a reload operation on the premises of a plant shall be considered a part of the plant operation.

Handler Reports

Sec. .30 Reports of receipts and utilization.

On or before the 5th day after the end of each month (if postmarked), or not later than the 7th day if the report is delivered in person to the office of the market administrator, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in sec. .9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in sec. .40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in sec. .9 (b) and (c) shall report;

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and

milk products in such manner as the market administrator may prescribe.

Sec. .31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in sec. .9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to sec. .76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

Sec. .32 Other reports.

(a) Each handler described in sec. .9 (a), (b), and (c) shall report to the market administrator on or before the 7th day after the end of each month of March through July the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of March through July the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and sec. .30 and .31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

Sec. .40 Classes of utilization.

Except as provided in sec. .42, all skim milk and butterfat required to be reported by a handler pursuant to sec. .30 shall be classified as follows:

(a) *Class I Milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II Milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no dispostion of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III Milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid from that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to sec. .15; and

(6) In shrinkage assigned pursuant to sec. .41(a) to the receipts specified in sec. .41(a)(2) and in shrinkage specified in sec. .41 (b) and (c).

Sec. .41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to sec. .30, the market administrator shall determine the following:

(a) The prorata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in sec. .9(c) except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this sub-paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid

milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to sec. .9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

Sec. .42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to sec. .44(a)(12) and the corresponding step of sec. .44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to sec. .44(a)(7) or the corresponding step of sec. .44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to sec. .44(a) (11) or (12) or the corresponding steps of sec. .44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section;

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to another order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of sec. .40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to .30 for the month within such transaction occurred; and

(b) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence;

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plants; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers by a handler described in .9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in .9(c) to another handler's pool plant shall be classified pursuant to Sec. .44 pro rata with producer milk received at the transferee-handler's plant.

Sec. .43 General classification rules.

In determining the classification of producer milk pursuant to Sec. .44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to Sec. .30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to Sec. .9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with Secs. .40, .41, and .42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in Sec. .9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solid; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to Sec. .9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

Sec. .44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in Sec. .9(a) for each of his pool plants separately the classification of producer milk and milk received from a handler described in Sec. .9(c), by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in Sec. .41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligated under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in Sec. .40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in sec. .40 (b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in sec. .40 (b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products

specified in sec. .40 (b) (1) that was not subtracted pursuant to paragraph (a) (4), (5) and (6) of this section.

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant.

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2) and (7) (v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v) and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a) (8) (ii), (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and the Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts of all pool plants of the handler or producer milk, milk from a handler described in sec. .9 (c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a) (7) (vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a) (7) (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in. . . . Sec. .40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section subtract from the pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v) and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant to the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section;

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be prorata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk;

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to Sec. .45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from

transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to Sec. .42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in Sec. .9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in Sec. .9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

Sec. .45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to Sec. .44 (a) (12) and the corresponding step of Sec. .44 (b) estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to .44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was allocated in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

Sec. .50 Class Prices.

Subject to the provisions of Sec. .52, the class prices for the month per hundredweight of milk shall be as follows:

(a) Class I price. The Class I price shall be the basic formula price for the second preceding month plus $2.30.

(b) Class II price. The Class II price shall be the basic formula price for the month plus 10 cents.

(c) Class III price. The Class III price shall be the basic formula price for the month.

Sec. .51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat differential (rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

Sec. .52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in .9 (c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in Sec. .50 (a) shall be adjusted by the amount stated in paragraph (a) (1) through (6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in Sec. .2, the adjustment shall be as follows:

	Adjustment per hundredweight
Northern zone	Minus 20 cents.
Central zone (North)	No adjustment.
Central zone (South)	Plus 15 cents.
Southern zone	Plus 37 cents.

Provided that any plant located in Alabama and within 110 miles of Montgomery, Alabama, and south of the central zone (south), shall receive a location differential of plus 20 cents.

(2) For a plant located in the State of Mississippi and Louisiana, the adjustment shall be the adjustment applicable at Mobile, York, Tuscaloosa, and Florence, Alabama, whichever city is nearest;

(3) For a plant that is outside the marketing area and north of a line extending through the northern boundaries of Georgia, Alabama and Mississippi and more than 100 miles (by the shortest hard surfaced highway distance as determined by the market administrator) from the nearer of the City Hall in Florence or Huntsville, Alabama, shall be reduced by 15 cents from the Northern Zone price and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the City Hall in Florence or Huntsville, Alabama.

(4) For a plant located in the State of Georgia, the adjustment shall be the adjustment applicable at Dothan, Opelika, Gadsden, and Huntsville, Alabama, whichever city is nearest;

(5) For a plant located in the State of Florida, outside of the Southern Zone, the adjustment shall be plus 55 cents;

(6) For a plant whose location is not covered by the provisions listed in paragraphs (a) (2), (3), (4), and (5) of this section and south of a line extending through the northern boundaries of Georgia, Alabama and Mississipi, the adjustment applicable for the nearest city designated in paragraph (2) and (4) of this section.

(b) For fluid milk products transferred in bulk from a pool plant to a distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to Sec. .44 (a)(12) an amount equal to:

(i) The pounds of skim milk in receipts of milk at the tranferee-plant from produces and handlers described in Sec. .9 (c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants:

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts:

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to Sec. .42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Locations adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b) (1) through (4) of this section.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph 9a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

Sec. .53 Announcement of class prices

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

Sec. .54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

Sec. .60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in Sec. .9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in sec. .9(c) that were classified in each class pursuant to secs. .43(a) and .44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to sec. .44(a)(14) and the corresponding step of sec. .44(b) by the respective class prices as adjusted by the butterfat differential specified in sec. .74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to sec. .44(a)(9) and the corresponding step of sec. .44 (b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to sec. .44(a)(7) (i) through (iv) and (vii) and the corresponding step of sec. .44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to sec. .44(a)(7) (v) and (vi) and the corresponding step of sec. .44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to sec. .44(a)(11) and the corresponding step of sec. .44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

Sec. .61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of August through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to sec. .60 for all handlers who filed the reports prescribed in sec. .30 for the month and who made the payments pursuant to sec. .71 for the preceding month;

(2) Add one-half the unobligated balance in the producer-settlement fund;

(3) Add or subtract an amount equal to the total net value of the location adjustments computed pursuant to sec. .75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to sec. .60 (f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of August through February.

(b) For each month of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a) (1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III milk by the Class III price;

(ii) Miltiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Mulitply the remaining hundredweight quantity of excess milk by the Class I price; and

(vi) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraph (a) (1) through (3) of this section, subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) (2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

Sec. .62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform price(s) pursuant to sec. .61 for such month.

Payments for Milk

Sec. .70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to secs. .71, .76, and .77, and out of which he shall make all payments pursuant to secs. .72 and .77, *Provided,* That any payments due to any handler shall be offset by any payments due from such handler.

Sec. .71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to sec. .60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to sec. .75, of such handler's receipts of producer milk and milk received from handlers pursuant to sec. .9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to sec. .60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

Sec. .72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to sec. .71(a)(2) exceeds the amount computed pursuant to sec. .71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market

administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

Sec. .73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, per hundredweight of milk received during the first 15 days of the month less proper deductions authorized in writing by such producer;

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to secs. .74 and .75 multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made pursuant to paragraph (a)(1) of this section;

(ii) Less proper deductions authorized in writing by such producer;

(iii) Less deductions for marketing services made pursuant to sec. .86;

(iv) Plus or minus adjustments for errors made in previous payments made to such producers; and

(v) If by such date such handler has not received full payment from the market administrator pursuant to sec. .72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the day prior to the date on which payments are due individual producers shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members, shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

Sec. .74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

Sec. .75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in Sec. .52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in Sec. .52(a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

Sec. .76 Payments for handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant up Sec. .30(b) and .31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section;

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order;

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price pursuant to Sec. .61(a), both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a) (3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to Sec. .60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially

regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corrpesonding class pursuant to paragraph (b) (1) (i) of this section. Any such transfers remaining after the above allocation which are classified in class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to Sec. .60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstitued skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to Sec. .60 for such handler shall include, in lieu of the value of other source milk specified in Sec. .60(f) less the value of such other milk source milk specified in Sec. .71(a)(2)(ii), a value of milk determined pursuant to Sec. .60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of Sec. .7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to Sec. .30(b) and .31(b) similar reports for each such nonpool supply plant:

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to Sec. .60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in Sec. .74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated.

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in Sec. .74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

Sec. .77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in moneys due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

Sec. .78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to Sec. .71, .77, .85, and .86 shall be increased one and one-half percent for each month or portion thereof that such obligation is overdue.

Administrative Assessment and Marketing Service Deduction

Sec. .85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in Sec. .9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in Sec. .9(c);

(c) Other source milk allocated to Class I pursuant to Sec. .44 (a)(7) and (11) and the corresponding steps of Sec. .44(b), except such other source milk that is excluded from the computations pursuant to Sec. .60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to Sec. .76(a)(2).

Sec. .86 Deduction for marketing service.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Determination of Base

Sec. .90 Base milk.

"Base milk" means the producer milk of a producer in each month of March through July that is not in excess of the producer's base multiplied by the number of days in the month.

Sec. .91 Excess milk.

"Excess milk" means the producer milk of a producer in each month of March through July in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

Sec. .92 Computation of base for each producer.

(a) Subject to Sec. .93, the base for each producer shall be an amount obtained by dividing the total pounds of his producer milk during the immediately preceding months of September through December by the number of days production represented by such producer milk or by 90, whichever is more.

(b) The base for a producer whose milk was delivered to a nonpool plant that became a pool plant after the beginning of the base-forming period (September-December) shall be calculated as if the plant were a pool plant for the entire base forming period. A base thus assigned shall not be transferable.

Sec. .93 Base rules.

(a) Except as provided in Sec. .92(b) and in paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less that 300 pounds effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Such application shall be on a form approved by the market administrator and signed by the baseholder or his heirs and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or their heirs.

(b) A producer who transferred base on or before February 1 may not receive by transfer additional base that would be applicable during March through July of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of his base to be applicable during March through July of the same year, but may transfer his entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed-upon division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) The base assigned a person who was a producer during any of the immediately preceding months of September through December may be increased to 90 percent of his average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraph (d) (1), (2) or (3) of this section occurred, providing such producer submitted to the market administrator in writing on or before March 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding September through December base-forming period the amount of milk produced on his farm was substantially reduced because of conditions beyond his control, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on his farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in his milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents him from supplying milk from his farm to a plant.

Sec. .94 Announcement of established bases.

On or before February 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the immediately preceding months of September through December and shall notify each producer and the handler receiving milk from him of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS[3]

§ 1000.1 Cope and purpose of part 1.

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order except as specifically defined otherwise, or modified, or otherwise provided, in an individual order.

§ 1000.2 Definitions.

The following terms shall have the following meanings as used in the order:

(a) *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

(b) *Order.* "Order" means the applicable part of Title 7 of the Code of Federal Regulations issued pursuant to section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department.* "Department" means the U.S. Department of Agriculture.

(d) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.

(e) *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Market administrator.

(a) *Designation.* The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Make rules and regulations to effectuate the terms and provisions of the order;

(3) Receive, investigate, and report complaints of violations to the Secretary; and

(4) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under this administration, including, but not limited to, the following:

(1) Execute and deliver to the Secretary a bond covering himself and a bond covering any person designated by the Secretary to act in this stead. The respective bond shall be:

(i) Delivered within 45 days after he (or the acting market administrator) enters upon his duties;

(ii) Effective as of the date he (or the acting market administrator) enters upon his duties;

(iii) Conditioned upon the faithful performance of the market administrator's duties; and

(iv) In an amount and with surety thereon satisfactory to the Secretary;

(2) Employ and fix the compensation of persons necessary to enable him to exercise his powers and perform his duties;

[3] These provisions are included solely for information of interested parties. They may not be changed on the basis of this proceeding.

(3) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of his office and in the performance of his duties, including his own bond and compensation and the necessary bonds of his employees;

(4) Keep records which will clearly reflect the transactions provided for in the order, and upon request, by the Secretary, surrender the records to his successor or such other person as the Secretary may designate;

(5) Furnish information and reports requested by the Secretary and submit his records to examination by the Secretary;

(6) Announce publicly at his discretion, unless otherwise directed by the Secretary, by such means as he deems appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order; or

(iii) Made available records and facilities as required pursuant to § 1000.5;

(7) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities; and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect.

(8) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(9) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal condfidential information.

§ 1000.4 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of the order whenever he finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order, there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order, the market administrator, or such other liquidating agent designated by the Secretary, shall if so directed by the Secretary liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

§ 1000.5 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall not be considered accounted for or established as used in a class other than the highest priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of his operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order, and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary for such market administrator to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a

period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.6 Termination of obligations.

The provisions of this section shall apply to any obligation under the order for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market-administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such records pertaining to such obligation are made available to the market administrator;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud of willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and;

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 et seq.) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims to be due him under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

Proposed by Dairymen, Inc:

Proposal No. 2

Renumber paragraph (c) of proposed Section .7 Pool Plant to (d) and add a new paragraph (c) to read as follows:

(c) For the purpose of qualifying a supply plant under paragraph (b) of this section, a cooperative association supplying pool distributing plants during the month at least sixty (60) percent of the producer milk of its members (including both milk delivered directly from their farms and that transferred from the supply plant(s) of the cooperative) may count (irrespective of other requirements of Section .9(c)) as shipments from the plant to pool distributing plants the milk delivered to pool distributing plants under section .9(c).

Proposed by Timmothy V. Presley, Joe F. Dyess, Donald Howard, and Jimmy Mathis:

Proposal No. 3

Require an independent producer or a producer that is a member of a cooperative to ship milk for a minimum of not less than 60 days during the base building period in order to obtain base in any given year.

Proposal No. 4

Payment from handlers to producers for milk delivered shall be as follows:

(a) An advance should be made on the 20th of each month that milk is delivered.

(b) Full payment should be made on the 10th of the following month that the milk is delivered.

Proposed by the following handlers: Baker & Sons Dairy; Barber Pure Milk Co., Dairy Fresh Corporation; Hall Brothers Dairy; and Meadow Gold Dairies.

Proposal No. 5

Where a regulated handler operates a manufacturing plant separate and apart from its Class I fluid milk plant, it is proposed that the manufacturing plant not be regulated.

Proposal No. 6

In the introductory text of proposed Section .30, Reports of Receipts and Utilization, the dates specified should be the "7th day" and "9th day", rather than the "5th day" and the "7th day", respectively.

Proposal No. 7

In paragraph (a) of proposed Section .32, Other reports, insert the word ("postmarked") immediately following "7th day" and "20 day".

Proposal No. 8

If an order is adopted, the pricing and pooling provisions of the order should not be made fully effective until after a two-month "dry run" period during which only the reporting requirements are in effect.

Proposal No. 9

In proposed Section .50, Class prices, paragraph (b) is proposed to read as follows:

(b) Class II price. The Class II price shall be the basic formula price for the second preceding month plus 10 cents.

Proposal No. 10

Add the following language at the end of paragraph (a)(1) of proposed Section 73, Payments to producers and to cooperative associations.: ". . ., except for milk received in March, April, May, June, July from a producer for whom no daily average base can be computed pursuant to Section .92. In such case, the applicable rate for making payment pursuant to this paragraph shall be the Class III price per hundredweight for the preceding month."

Proposal No. 11

Add the following sentence at the end of proposed Section .78, Charges on overdue accounts:

If a due date falls on a Saturday, Sunday or national holiday, the due date of the payment should be the next day that the market administrator's office is open for business, for the purpose of applying a late payment charge; and, any payment received after the due date in an envelope that is postmarked not later than the second day prior to the

due date shall be considered to have been received by the due date.

Proposal No. 12

In an emergency when no fluid milk is available to a handler that the market administrator on verification of this fact may waive the provision that gives preference in the allocation and pricing provisions to milk from regulated sources.

Proposal No. 13

Allow the operator of a pool plant to divert producer milk from such plant to other pool plants directly from the farms of producers.

Copies of this notice may be procured from the Hearing Clerk, Room 1070, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.

Office of the Administrator, Agricultural Marketing Service.

Office of the General Counsel.

Dairy Division, Agricultural Marketing Service (Washington office only).

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on: May 20, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-15921 Filed 5-22-80; 8:45 am]

BILLIING CODE 3410-02-M

federal register

Friday
May 23, 1980

Part V

Office of Management and Budget

Rescission and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report a proposal to rescind $12.4 million in budget authority previously provided by the Congress. In addition, I am reporting six revisions to previously transmitted deferrals increasing the amount deferred by $130.6 million.

The recission proposal involves law enforcement assistance in the Department of Justice. The revisions to existing deferrals involve programs in the Departments of Defense, Energy and Justice, and the Environmental Protection Agency.

The details of the recission proposal and each deferral are contained in the attached reports.

Jimmy Carter

The White House
May 20, 1980.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission#	Item	Budget Authority
	Department of Justice:	
	Office of Justice Assistance, Research and Statistics	
R80-59	Law enforcement assistance.....	12,439
Deferral #		
	Department of Defense - Military:	
D80-50A	Various accounts.....	914,600
	Department of Energy:	
	Atomic Energy Defense Activities	
	Atomic energy defense activities-	
D80-51A	operating expenses.....	1,000 1/
	Energy Programs	
	Energy supply, research and development,	
D80-52A	operating expenses.....	2,500 1/
	Departmental Administration	
D80-53A	Departmental administration.....	1,000 1/
	Department of Justice:	
	Office of Justice Assistance, Research and Statistics	
D80-70A	Law enforcement assistance.....	19,396
	Environmental Protection Agency:	
D80-65A	Construction grants.....	3,647,948
	Subtotal, deferrals.....	4,586,444
	TOTAL, rescission proposal and deferrals	4,598,883

1/ Deferral of outlays only.

* *

SUMMARY OF SPECIAL MESSAGES
FOR FY 1980
(in thousands of dollars)

	Rescissions	Deferrals
Ninth special message:		
New items.....	12,439	---
Change to amounts previously submitted..	---	130,594
Effect of ninth special message.....	12,439	130,594
Previous special messages.....	1,605,622	10,189,514
Total amount proposed in special messages...	1,618,061	10,320,108 1/

1/ This amount represents budget authority except for $21,085 thousand involving the deferral of outlays only (D80-23A, D80-51A, D80-52A, and D80-53A).

Rescission Proposal No: R80-59

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Justice	New budget authority (P.L. 96-68) $ 442,695,000
Bureau Office of Justice Assistance, Research and Statistics	Other budgetary resources 86,038,541
Appropriation title & symbol Law enforcement assistance 1/ 15X0400	Total budgetary resources 528,733,541
	Amount proposed for rescission $ 12,439,446
OMB identification code: 15-0400-0-1-754	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other _____
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: The Law enforcement education program and the Summer internship program were scheduled to be transferred to the Department of Education pursuant to Public Law 96-88. In conjunction with the President's effort to reduce Federal spending, the Administration is planning to phase out these two lower priority programs. Unobligated balances currently available for these programs are proposed for rescission.

Estimated Effects: This rescission would eliminate any further awards under the Law enforcement education program and the Summer internship program.

Outlay Effects: (in millions and tenths)

	Outlay Savings			
	1980	1981	1982	1983
Law enforcement assistance.....	---	---	---	---
Department of Education.....	---	$12.4	---	---

The outlay savings from this rescission proposal is reflected in the Department of Education since the funds were originally scheduled for transfer to that Department.

1/ This account is the subject of a deferral in FY 1980 (D80-70A).

R80-59

DEPARTMENT OF JUSTICE

Office of Justice Assistance, Research and Statistics

Law Enforcement Assistance

Of the funds appropriated under this head in P.L. 96-68, making appropriations for the Department of Justice for fiscal year 1980, and other appropriations acts in previous years, $12,439,446 are rescinded.

D80-50.1A thru 50.34A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D80-50.1 thru 50.34 transmitted to the Congress on April 16, 1980, and printed as House Document No. 96-299.

This revision to a deferral of Department of Defense-Military funds increases the amount previously reported as deferred from $801,700,000 to $914,600,000. This increase of $112,900,000 is deferred for part of the year in the Aircraft Procurement, Air Force, 1980/1982 account.

The deferral of funds is related to the proposed transfer of $112.9 million in 1980 appropriations currently pending before the Congress. Previously, the transfer would have terminated procurement of A-7K aircraft. Another version of the A-7, the A-7D, will now be procured; other programs within the same account have now been substituted as a funding source. This deferral action is taken to preserve the funds pending congressional action on the transfer request.

Deferral No: D80-50.1A thru 50.3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense-Military	New budget authority (P.L. 96-154): $37,102,390,000
Bureau:	Other budgetary resources: 10,773,971,127
Appropriation title & symbol: See Coverage Section below	Total budgetary resources: 47,876,361,127
	Amount to be deferred: Part of year: $661,200,000
	Entire year: 253,400,000
OMB identification code: See Coverage Section below	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☒ Annual ☒ Multiple-year Sept. 30, 1980/1981/1982/1984 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Coverage

Appropriation Title	Symbol	OMB Identification Code	Amount to be Deferred: Part of Year	Entire Year
.1) Operation and Maintenance, Navy Reserve	1701806	17-1806-0-1-051	$30,000,000	
.2) Aircraft Procurement, Army	218/02031	21-2031-0-1-051	849,000	
.3) Aircraft Procurement, Army	219/12031	21-2031-0-1-051	497,000	
.4) Missile Procurement, Army	218/02032	21-2032-0-1-051	357,000	
.5) Missile Procurement, Army	219/12032	21-2032-0-1-051	91,000	
.6) Missile Procurement, Army	210/22032	21-2032-0-1-051	20,000,000	$4,700,000
.7) Procurement of Weapons and Tracked Combat Vehicles, Army	218/02033	21-2033-0-1-051	1,161,000	
.8) Procurement of Weapons and Tracked Combat Vehicles, Army	219/12033	21-2033-0-1-051	655,000	
.9) Procurement of Weapons and Tracked Combat Vehicles, Army	210/22033	21-2033-0-1-051	16,400,000	
.10) Procurement of Ammunition, Army	218/02034	21-2034-0-1-051	15,104,000	
.11) Procurement of Ammunition, Army	219/12034	21-2034-0-1-051	1,954,000	
.12) Other Procurement, Army	218/02035	21-2035-0-1-051	10,048,000	
.13) Aircraft Procurement, Navy	178/01506	17-1506-0-1-051	8,000,000	
.14) Aircraft Procurement, Navy	179/11506	17-1506-0-1-051	12,000,000	
.15) Aircraft Procurement, Navy	170/21506	17-1506-0-1-051	40,000,000	13,700,000
.16) Weapons Procurement, Navy	178/01507	17-1507-0-1-051	35,000,000	
.17) Weapons Procurement, Navy	179/11507	17-1507-0-1-051	19,000,000	

Appropriation Title	Symbol	OMB Identification Code	Amount to be Deferred Part of Year	Amount to be Deferred Entire Year
.18) Shipbuilding and Conversion, Navy**	170/41611	17-1611-0-1-051	95,800,000	86,400,000
.19) Other Procurement, Navy	178/01810	17-1810-0-1-051	5,900,000	
.20) Other Procurement, Navy	179/11810	17-1810-0-1-051	5,200,000	
.21) Other Procurement, Navy	170/21810	17-1810-0-1-051		21,500,000
.22) Procurement, Marine Corps	170/21109	17-1109-0-1-051		8,700,000
.23) Aircraft Procurement, Air Force	578/03010	57-3010-0-1-051	122,600,000	
.24) Aircraft Procurement, Air Force	579/13010	57-3010-0-1-051	6,700,000	
.25) Aircraft Procurement, Air Force	570/23010	57-3010-0-1-051	120,017,000*	71,900,000
.26) Missile Procurement, Air Force	578/03020	57-3020-0-1-051	11,600,000	
.27) Missile Procurement, Air Force	579/13020	57-3020-0-1-051	14,600,000	
.28) Missile Procurement, Air Force	570/23020	57-3020-0-1-051	2,600,000	
.29) Other Procurement, Air Force	578/03080	57-3080-0-1-051	34,900,000	
.30) Other Procurement, Air Force	579/13080	57-3080-0-1-051	20,000,000	
.31) Research, Development, Test, and Evaluation, Army	219/02040	21-2040-0-1-051	2,000,000	
.32) Research, Development, Test, and Evaluation, Navy	179/01319	17-1319-0-1-051	8,167,000	
.33) Research, Development, Test, and Evaluation, Navy	170/11319	17-1319-0-1-051		6,900,000
.34) Research, Development, Test, and Evaluation, Air Force	570/13600	57-3600-0-1-051		39,600,000
			$661,200,000*	$253,400,000

Justification:*

The Department of Defense has identified these amounts to partially offset the requirement for additional funds because of increased operations in the Persian Gulf/Indian Ocean area, higher fuel and transportation costs, and inflation. Amendments to the pending 1980 supplemental and 1981 budget requests have been proposed to meet these additional requirements. The requests include language transfers of $914.6 million: $661.2 million in 1980 and $253.4 million in 1981. All amounts proposed for transfer are being deferred pending Congressional action on the 1980 supplemental and 1981 amended requests.

Estimated Effects:

This action would preserve these funds so that transfers can be effected upon completion of Congressional action.

Outlay Effects:

Pending completion of Congressional action on the transfer proposals, no outlay effects are recognized.

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* Revised from previous report.
** This account is the subject of another deferral -- D80-41.

D80-51A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D80-51 transmitted to the Congress on April 16, 1980, and printed as House Document No. 96-299.

This revision to a deferral for Atomic Energy Defense Activities-operating expenses in the Department of Energy reflects a technical adjustment to the previous report. The deferred funds have been obligated. Therefore, the deferral involves a delay of expenditures rather than a delay of obligations, as previously reported.

Deferral No: D80-51A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Energy	New budget authority (P.L. 96-69) $ 2,371,147,000
Bureau Atomic Energy Defense Activities	Other budgetary resources 432,245,235
Appropriation title & symbol Atomic Energy Defense Activities 1/ Operating expenses (Defense Nuclear Waste Management) 89X0220	Total budgetary resources 2,803,392,235
	Amount to be deferred: Part of year $ ____ Entire year $ 1,000,000* 2/
OMB identification code: 89-0220-0-1-053	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other ____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: This deferral of $1,000,000 would allow for the consistent transition from FY 1980 to the amended FY 1981 program as currently proposed. This deferral applies to the Interim Waste Operations program, and is part of the Administration's effort to combat inflation by reducing--where feasible--lower priority programs in 1980 and is complementary to the effort to balance the 1981 Budget.

Estimated Effects: Efforts to transfer high level waste from old waste tanks to new tanks at the Savannah River nuclear waste disposal site will be reduced and isolation and stabilization of old single-shelled tanks at the Hanford site in Washington State will be rescheduled. The overall safe handling and storage of DOE radioactive wastes will continue unaffected by this action.

Outlay Effects: This deferral will shift an estimated $1.0 million in outlays from FY 1980 into FY 1981.

1/ This account is the subject of a similar rescission proposal in FY 1980 (R80-12).

2/ Deferral of outlays only.

* Revised from previous report.

D80-52A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D80-52 transmitted to the Congress on April 16, 1980, and printed as House Document No. 96-299.

This revision to a deferral for Energy Supply, Research and Development-operating expenses in the Department of Energy reflects a technical adjustment to the previous report. The deferred funds have been obligated. Therefore, the deferral involves a delay of expenditures rather than a delay of obligations, as previously reported.

Deferral No: D80-52A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Energy	New budget authority (P.L. 96-69) $ 2,220,923,000
Bureau Energy Programs	Other budgetary resources 467,382,100
Appropriation title & symbol Energy Supply Research and Development Operating expenses 1/ 89X0224	Total budgetary resources 2,688,305,100
	Amount to be deferred: Part of year $ —— Entire year 2,500,000* 2/
OMB identification code: 89-0224-0-1-271	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other ———
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ——— (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ———

Justification:

Commercial Waste (remedial action). Delays in preparing and submitting required legislation to Congress to authorize DOE to undertake decontamination and decommissioning remedial action at selected(formerly utilized)government facility sites (i.e., the Manhattan Engineering District/Atomic Energy Commission) have resulted in reduced funding requirements in FY 1980 for this program.

Advanced Nuclear Systems. The space power systems program conducts broad and detailed assessments of conventional, advanced, and specialized nuclear system options and applications which support planning for future space programs.

These deferrals are part of the Administration's effort to reduce the inflationary impact of federal spending on the general economy by reducing, where feasible, lower-priority Federal spending in 1980.

Estimated Effects:

Commercial Waste (remedial action). Because of the delay in obtaining the required authorizing legislation, remedial actions will not begin as early in FY 1980 as originally expected. On sites where DOE has clear authority to proceed, work will continue as scheduled.

Advanced Nuclear Systems. This action will preclude the Savannah River Plant from instituting a planned four-shift schedule. It will cause a four month delay in Plutonium-238 production and cause the International Solar Polar mission final design schedule to be delayed from July 1980 to late in FY 1980. The revised program schedule will allow the progam to continue within acceptable risks.

D80- 52A

Outlay Effects:

Commercial Waste (remedial action). This deferral action will shift an estimated $2.0 million in outlays from FY 1980 into FY 1981.

Advanced Nuclear Systems. This deferral action will shift an estimated $0.5 million in outlays from FY 1980 into FY 1981.

1/ This account is the subject of a rescission proposal in FY 1980 (R80-13).
2/ Deferral of outlays only.
* Revised from previous report.

D80-53A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D80-53 transmitted to the Congress on April 16, 1980, and printed as House Document No. 96-299.

This revision to a deferral for Departmental Administration in the Department of Energy reflects a technical adjustment to the previous report. The deferred funds have been obligated. Therefore, the deferral involves a delay of expenditures rather than a delay of obligations, as previously reported.

Deferral No: D80-53A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Energy	New budget authority (P.L. 96-69 ___): $ 228,279,000
Bureau: Departmental Administration	Other budgetary resources: 168,094,955
Appropriation title & symbol: Departmental administration 89X0228 1/	Total budgetary resources: 396,373,955
	Amount to be deferred: Part of year: $ ___
	Entire year: 1,000,000 2/*
OMB identification code: 89-0228-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other ___
Type of account or fund: ☐ Annual ☐ Multiple-year ___ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ___

Justification: This deferral affects the In-house energy management program which funds energy conservation surveys of existing facilities to determine conservation investment opportunities and central plant fuel conversion studies to develop fuel conversion requirements. This program also funds energy conservation retrofit projects selected in order to achieve the 20% reduction in DOE energy consumption by 1985 mandated by Executive Order No. 12003, and fuel conversion projects to eliminate the use of scarce oil or natural gas and substitute coal and renewable energy resources. While it is recognized that these projects provide desirable benefits, this deferral can be made without affecting critical needs. This action is part of the Administration's effort to combat the high rate of inflation existing today.

Estimated Effects: This deferral will delay the accomplishment of certain retrofit projects. While a delay will be experienced, project cancellation is not anticipated and annual savings and increases in energy efficiency will merely occur at a later date.

Outlay Effect: This deferral action will shift an estimated $1.0 million in outlays from FY 1980 into 1981.

1/ This account is the subject of a rescission proposal in FY 1980 (R80-19).

2/ Deferral of outlays only.

* Revised from previous report.

D80-70A

SUPPLEMENTARY REPORT

Report pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D80-70 transmitted to the Congress on May 13, 1980.

This revision to a deferral for law enforcement assistance in the Department of Justice increases the amount previously reported as deferred from $13,396,000 to $19,396,000. This increase of $6,000,000 is necessary to preserve funds associated with a transfer request recently transmitted to the Congress.

Deferral No: D80-70A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Justice	New budget authority (P.L. 96-68) $ 442,695,000
Bureau Office of Justice Assistance, Research and Statistics	Other budgetary resources 86,038,541*
Appropriation title & symbol	Total budgetary resources 528,733,541*
Law enforcement assistance a/ 15X0400	Amount to be deferred: Part of year $ ____
	Entire year 19,396,000*
OMB identification code: 15-0400-0-1-754	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other ____
Type of account or fund: ☐ Annual	Type of budget authority: ☒ Appropriation
☐ Multiple-year ____ (expiration date)	☐ Contract authority
☒ No-year	☐ Other ____

Justification:* Funds totalling $19,396,000 provided for law enforcement assistance are deferred pending congressional approval and enactment of a transfer of these funds to help offset supplemental funding requirements for other Department of Justice activities. Supplemental requests currently pending before the Congress propose the transfer of these funds to the salaries and expenses accounts of the Federal Bureau of Investigation ($7,648,000), the Drug Enforcement Administration ($3,424,000), the Immigration and Naturalization Service ($4,492,000), the Federal Prison System ($846,000), U.S. Attorneys and Marshals ($2,008,000), and General Legal Activities ($978,000).

This deferral action and the associated transfer requests, which are intended to offset a requirement for $19.4 million of additional funds, are a part of the Administration's effort to reduce Federal spending.

Estimated Effects:* This deferral--in conjunction with the transfer requests--would reduce planned FY 1980 obligations for: (1) categorical grant programs for law enforcement assistance by approximately 6 percent, and (2) awards under the Law enforcement education program by approximately 24 percent.

Outlay Effects:* (in millions and tenths)

	1980	1981	1982
Department of Education	$-4.4	$-1.6	---
Law enforcement assistance	-2.7	-6.7	$-4.0
Department of Justice activities receiving transferred funds	+17.8 b/	+1.6	---
Total	+10.7	-6.7	-4.0

* Revised from previous report.

a/ This account is the subject of a rescission proposal in FY 1980 (R80-59).

b/ While outlays for these activities will increase, this spending substitutes for amounts that would otherwise have been required under additional appropriations.

D80-65A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of Public Law 93-344

This report revises Deferral No. D80-65 transmitted to the Congress on April 16, 1980, and printed as House Document No. 96-299.

This revision to a deferral for the Environmental Protection Agency for construction grants increases the previously reported deferral from $3,636,254,355 to $3,647,948,144. This increase of $11,693,759 results from the availability of additional recoveries of prior year obligations that need to be deferred to meet the Administration's outlay target for this program. Only recovered funds that are not subject to reallotment in FY 1980 have been deferred.

Deferral No: D80-65A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Environmental Protection Agency	New budget authority (P.L. 96-103) $ 3,400,000,000
Bureau	Other budgetary resources 4,175,959,137*
Appropriation title & symbol Construction Grants 68X0103	Total budgetary resources 7,575,959,137*
	Amount to be deferred: Part of year (until 9/80) $ 400,000,000 Entire year 3,247,948,114*
OMB identification code: 68-0103-0-1-304	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other _____
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification:*

This deferral is part of the President's program to balance the budget in FY 1981. Coupled with restrictions on the level of obligations in the first three quarters of FY 1981, this deferral will help reduce Construction Grant outlays by $95 million in FY 1981.

This deferral applies to the remaining FY 1980 new obligational authority for Section 201 grants in the amount of $3,203,888,100 and $164,062,219 of recoveries of prior year obligations that are not subject to reallotment in FY 1980. This does not include the $70,234,034 in FY 1980 new obligational authority available for State program management under Section 205(g) of the Clean Water Act. The deferral also applies to all remaining funds appropriated in P.L. 94-447 in the amount of $279,997,795. All funds under this deferral will remain deferred for the entire year, with the exception of $400,000,000 in FY 1980 funds which are to be made available in September 1980.

Estimated Effect: *

The estimated effect of this deferral is to reduce obligations of FY 1980 budget authority in FY 1980 by approximately $450 million, from $1,000 million to $550 million. Of the obligations to be made this year from FY 1980 funds, $400 million will be delayed until September 1980. States will not be affected until they exhaust their FY 1979 allotment, at which time construction commitments for new wastewater treatment facilities dependent on deferred funds will be postponed. New projects in up to thirty-five States will be impacted to some extent. Seven States have virtually exhausted their FY 1979 allotment as of this time. Appropriations in the amount of $3,731,899,123 for FY 1979 and prior years remain available for obligation in FY 1980.

* Revised from previous report.

D80-65A

A less restrictive deferral of funds will also be necessary in FY 1981 in order to meet the outlay reduction target. The Administration is submitting a related proposal to extend the reallotment periods by one year.

It is the intent of the Environmental Protection Agency to make available, subject to the requirements of Title II of the Clean Water Act, the funds apportioned in September 1980 in the following priority: (1) projects as to which a consent decree has been signed by the parties or court order entered on or before March 31, 1980, as a result of a Title III enforcement action or other action under Federal law, or projects which were before a Federal court on or before March 31, 1980, where court action has resulted in a court order or settlement on the issue of grant award or amount; and (2) projects as to which a consent decree has been signed by the parties or court order entered after March 31, 1980, as a result of a Title III enforcement action. Any remaining funds will be made available to the States based on the FY 1980 allotment formula and subject to the FY 1980 allotment totals for each State and taking into consideration the availability of prior year funding for individual States.

Outlay Effect:

The effect of this deferral is to lower FY 1980 outlays by $6 million and in conjunction with obligation controls in FY 1981 to reduce FY 1981 outlays by $95 million.

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federal register

Friday
May 23, 1980

Part VI

Department of Energy

Economic Regulatory Administration

Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 516

[Docket No. ERA-R-79-6-A]

Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting; Amendments to the Final Rule

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final rule.

SUMMARY: On February 15, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy gave notice by publication in the **Federal Register** (45 FR 10746) of its proposal to amend the Final Rule on the Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting (10 CFR Part 516, 44 FR 27606, May 10, 1979). The Final Rule implements Title IV, Section 402 of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*). By this action, ERA is adopting the proposed amendments with minor modifications, effective upon publication, to amend both the definition of "natural gas lighting fixture" in Subpart A and selected exemption guidelines in Subpart D of the Final Rule. The Final Rule prohibits local natural gas distribution companies from supplying natural gas for residential, municipal, or commercial use for outdoor lighting and prohibits direct industrial users from using natural gas for such lighting unless an appropriate exemption has been granted. Local distribution companies and direct industrial users are also prohibited from installing new outdoor lighting fixtures that will use natural gas.

Section 402(e) of FUA permits ERA to delegate its responsibility and authority with regard to outdoor lighting under that section to the appropriate State regulatory authorities if such delegation would be consistent with the purposes of the Act. Pursuant to § 402(e) of FUA, ERA delegated its full responsibility to implement, administer and enforce the prohibitions on natural gas outdoor lighting to the appropriate regulatory authorities of the States (10 CFR Part 516, Subpart C). The delegation was intended to permit those authorities to establish and carry out, at the State and local levels, regulatory programs that are consistent with the purposes of Section 402, while recognizing specific State and local needs and requirements. Along with the delegation of authority, ERA provided guidelines on criteria that could be used by appropriate State regulatory authorities in evaluating requests for FUA exemptions. The guidelines (10 CFR Part 516, Subpart D) are offered for use until the time each regulatory body establishes its own exemption criteria. The State regulatory authorities are now at various stages in the process of creating and implementing their individual programs.

DATES: Effective date: May 23, 1980.

FOR FURTHER INFORMATION CONTACT:

Earl Bragdon, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Washington, D.C. 20461, 202–653–3920.

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room B–110, Washington, D.C. 20461, 202–653–4055.

Marya Rowan, Office of the General Counsel, Department of Energy, Rm. 6G–087, 1000 Independence Avenue SW., Washington, D.C., 20585, 202–252–2967.

SUPPLEMENTARY INFORMATION:

I. Background

A Final Rule on the Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting (10 CFR Part 516, 44 FR 27606, May 10, 1979) was issued by the Economic Regulatory Administration (ERA) of the Department of Energy on May 3, 1979 to implement § 402 of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*). The rule prohibited local natural gas distribution companies from supplying natural gas for residential, municipal, or commercial use, and direct industrial users from using natural gas for outdoor lighting unless an appropriate exemption has been granted as of the effective dates specified in 10 CFR §§ 516.21 and 516.22. Local distribution companies and direct industrial users are also prohibited from installing new outdoor lighting fixtures that will use natural gas (10 CFR § 516.20).

Pursuant to the provisions of § 402(e) of FUA, ERA, by means of 10 CFR Part 516, Subpart C, delegated full responsibility with respect to the implementation, administration, and enforcement of the prohibitions on natural gas outdoor lighting to the "appropriate State regulatory authorities". This delegation was intended to permit such authorities to establish and administer regulatory programs at the State and local levels consistent with the purposes of § 402 of the Act, while taking into account specific State and local needs. The delegation authorized: the issuance of orders exempting certain natural gas outdoor lighting fixtures from the prohibitions of 10 CFR, Part 516, Subpart B, the establishment of procedures and criteria for use in processing exemption petitions and reaching determinations on such petitions, the establishment of enforcement mechanisms, the enforcement of the prohibitions and the assessment of civil penalties, as necessary. The State regulatory authorities, to which the delegation of authority has been made, are to administer the programs in their jurisdictions using the definition of "natural gas outdoor lighting fixture" contained in 10 CFR Part 516, Subpart A. Also, until these authorities establish their own exemption criteria, it is anticipated that they will use the guidance on exemptions provided in 10 CFR Part 516, Subpart D.

Comments continued to be directed to ERA, particularly regarding the definition of "natural gas outdoor lighting fixture" and certain of the guidelines on exemptions. As a result, ERA decided that certain amendments in these areas might be warranted to better facilitate the implementation of the FUA outdoor lighting program. Accordingly, on February 15, 1980, ERA published in the **Federal Register** proposed amendments to the Final Rule and solicited comments on them (45 FR 10746). A hearing on the proposed revisions was held in Washington, D.C. on March 12, 1980 and written comments received by ERA on or before April 15, 1980 were accepted into the public record for consideration. The major comments are discussed below.

II. Discussion of Comments and ERA Response

A. Section 516.11—Definitions

In the February 15, 1980 notice, ERA proposed to revise the "natural gas outdoor lighting fixture" definition in § 516.11(d) (10 CFR 516.11(d)) to mean the entire, indivisible lighting fixture, rather than the unit or any parts of the unit. The comments on this proposal were favorable. However, two related issues were raised in the commenters' discussions.

First, one commenter expressed disagreement with ERA's indication in the preamble that the redefinition would permit only the replacement of parts of a lighting fixture, as distinguished from the replacement of the entire lighting fixture. The commenter asserted that it is neither practical nor reasonable to permit the part-by-part repair of an existing fixture, including the replacement of all the old parts of an

existing fixture with all new parts while prohibiting replacement of such a fixture. In the commenter's view, the term, "install" contained in § 402(a) of the Act clearly refers to a new installation and does not refer to replacement of existing fixtures. The title of § 402(a) and the Conference Report both indicate that the prohibition applies to the installation of a new outdoor lighting fixture while the text of § 402(a) prohibits the installation of any outdoor natural gas lighting fixture. ERA has determined that replacement of existing units should be permitted. The language to the contrary in the earlier preamble has been deleted. The Final Rule permits such replacement.

Second, the commenter asked ERA to indicate the specific impact that the proposed redefinition will have upon the replacement and repair of natural gas lighting fixtures prior to January 1, 1982 and thereafter. As discussed above, ERA has determined that replacement fixtures are not covered by the installation prohibition in § 402(a) of the Act. The issue is, therefore, moot. Since the prohibition of selling gas for use in such fixtures will be in effect after January 1, 1982 ERA presumes that only those municipal or residential fixtures for which an exemption has been granted by an appropriate authority will be replaced (or repaired). The prohibitions applicable to the sale of gas for use in commercial and industrial lighting fixtures for which natural gas was being supplied on November 9, 1978, went into effect on November 5, 1979. ERA presumes that such fixtures will not be replaced (or repaired) unless an appropriate exemption permitting the continuation of such service has been granted.

After consideration of the comments received, ERA has decided to adopt the revised "natural gas lighting fixture" definition as proposed.

B. Section 516.43—Commercial Lighting of a Traditional Nature

ERA proposed to revise § 516.43 of the Final Rule to change the title of the exemption and to delete paragraphs (1) and (2) of subsection (b). These proposed changes would omit any references to and criteria based on "historical significance" and permit a gas light to be considered for an exemption on the basis of its traditional nature and conformance with the cultural or architectural style of the area in which it is located.

The comments generally approved of ERA's proposed revisions. One commenter expressed concern, however, about the inclusion of the modifier "long-standing" in connection with the cultural and architectural style criteria contained in subsection (b). The commenter opposed the use of this term as it is included in neither FUA nor the legislative history of FUA. ERA included the "long-standing" concept in conjunction with the criteria applicable to the fixture's location to reinforce the concept of "traditional". ERA did not intend for the inclusion of the phrase "long-standing" to add any element not already implicit in the statutory criteria of § 402(c)(4) of FUA. Neither did ERA foresee future difficulties arising in the evaluation of a request for this exemption when the lighting fixture, while "traditional", is lacking in formal "historical significance". On reconsidering the criteria in light of the comments received, however, ERA believes that the requirement that the fixture be both of (a) traditional nature and (b) conform with the cultural or architectural style of the area of location, is sufficiently definitive to assure that FUA's purposes are achieved with respect to commercial gas lights. Since the regulatory phrase "long-standing" can be viewed as redundant given the statutory term of "traditional" and appears to make a minimal contribution to the criteria, ERA has decided to delete the term from subsection (b).

A similar comment was made regarding ERA's inclusion in the exemption criteria (§ 516.43(b)) of the phrase "the replacement lighting fixture will enhance the area . . ." The commenter noted a lack of support for this "requirement" in FUA. ERA does not regard this phrase as imposing an additional requirement for this exemption. However, the phrase appears to add little to subsection (b). Accordingly, the phrase has been deleted.

One commenter requested that subsection (c), Stays, included in the Final Rule but apparently deleted by the proposed revision, be re-instated. ERA did not intend that this subsection be deleted. ERA has simply modified the language of subsection (c) to correspond with the revised criteria for the commercial lighting exemption.

ERA is adopting the proposed revisions to the Final Rule with the changes discussed above.

C. Section 516.44—Safety of Persons and Property

ERA proposed in its notice to revise § 516.44 of the Final Rule to delete subsection (b)(2). This deletion would eliminate the required demonstration that compliance with the FUA gas lighting prohibitions would impose a substantial hardship upon the petitioner or would not be justified by the savings likely to accrue over the useful life of a substitute lighting fixture. The proposed changes would have permitted, rather than required the submission of any relevant evidence in connection with a safety exemption request, including not only evidence of financial hardship and lack of savings factors, but also evidence of other factors such as reliability of substitute lighting.

The commenters agreed that ERA's proposed deletion of § 516.44(b)(2) as a mandatory criterion would be appropriate in order for § 516.44 to conform to § 402(c)(3)(A) of the Act, which does not condition the granting of the safety exemption upon the petitioner's qualification for a substantial expense exemption.

The usefulness of proposed subsection 516.44(c), which would have permitted a petitioner to meet an optional criterion, was questioned. A commenter noted that where a petitioner had already qualified for the safety exemption under the criteria in the subsection (b) he would not be likely to elect to meet the optional criterion as well. Therefore, the proposed subsection (c) would amount to a nullity. ERA agrees with this assessment, and has decided not to adopt proposed subsection (c).

By far the greatest number of comments on the safety exemption focused upon ERA's inclusion of the word "significant" in the subsection (b)(1) and (2) criteria. One commenter felt that confusion would result from the use of "significant" since the term is not clearly defined in either FUA or the Final Rule. Furthermore, the commenter indicated that it may be difficult for petitioners to acquire the type of evidence necessary to meet the "significant" increase criteria, or for them to interpret the data, if it were obtained. In addition to these perceived difficulties that may arise to defeat petitioners' efforts, or to make such efforts more difficult, the commenter foresaw petitions involving statistical surveys, descriptions, and the like, as suggested in ERA's preamble, becoming an undue burden on the State regulatory authorities which would need to sort out relevant crime statistics from irrelevant ones and weigh descriptions of unsafe conditions.

In view of these comments, it appears that the commenters perceived that more sophisticated petitions were required under subsection (b) (1) and (2) than ERA intended. Since it is ERA's intention to give the State regulatory authorities as free a hand as possible in interpreting this section, so long as their interpretations and actions are consistent with the purposes of FUA,

ERA has, deleted the work "significant" from the criteria in § 516.44(b) (1) and (2) in order to facilitate the exemption process at State and local levels.

ERA also considered a comment involving the findings of a study on consumer attitudes and opinions, performed for the Amercian Gas Association in 1979. The study indicated that the use of natural gas lights had declined voluntarily due to price sensitivity associated with rising energy costs. Generally, customers who felt the need for a gas light were found to have continued with their use despite the increased cost of fuel because the benefits of continued use were seen by the gas light owners as outweighing both the cost of operation and the conversion of the gas light to another energy source. Those customers who terminated the use of their gas lights apparently judged that their use of such lights was not essential. Thus, the commenters urged that, where a gas light owner determines that the light is necessary for his safety and security, the appropriate State regulatory authority should be encouraged to grant an exemption on that basis alone. ERA is unwilling to so advise the State regulatory authorities. However, under the Part 516, Subpart C delegation of authority, ERA intended that such authorities have maximum discretion to deal expeditiously with exemption requests, taking into account State, local or regional needs, so long as their actions are consistent with § 402 of FUA.

In view of the foregoing discussion, ERA has decided to adopt its proposed revision of § 516.44 with the modifications indicated above.

D. Section 516.46—Compliance Which Entails Substantial Expense and Would Not Be Cost Justified.

Section 516.46 of the Final Rule was originally designed by ERA to apply to local distribution companies and direct industrial users, while consideration of substantial hardships and costs to individuals was limited to § 516.44, the safety exemption. In its proposed revision of § 516.46, ERA acknowledged that individuals should also be able to petition under this section for an exemption, citing as grounds that compliance would entail substantial expense and would not be cost justified. Under the proposed revision all petitioners would address the same basic criteria for an exemption, using evidence to demonstrate the cost impact of compliance on their particular circumstances.

However, the proposed revision of § 516.46(a) would permit petitions to be filed for this exemption only "if natural gas was being supplied to the petitioner for outdoor lighting purposes on November 9, 1978." One commenter noted that local distribution companies, as suppliers, rather than as recipients of natural gas for outdoor lighting purposes, would be foreclosed by this language from petitioning for the exemption. The commenter did not believe that ERA intended this result. ERA agrees that this result was not intended and revised subsection (a) has been modified to avoid this problem.

The commenters otherwise basically approved of ERA's proposed revisions. However, they did suggest that § 516.46(b)(2) be revised to indicate expressly that proposed Btu consumption is an integral part of any determination of whether there are any benefits to be derived from compliance with the prohibitions. ERA believes that, if a petitioner makes the demonstrations required under § 516.46(b) (1) and (2), showing negative benefits to result from compliance by conversion to a less efficient, alternate lighting system as related to its particular financial circumstances, only then would the granting of this exemption be appropriate. As proposed Btu consumption is thus implicitly included in subsection (b), ERA does not see a need to make further revisions in the language of that subsection.

A commenter suggested that, ERA should "find" that replacement of gas lights is not cost justified where the payback period exceeds three years or where trenching must be done in paved areas. Again, ERA does not wish to prescribe the type or nature of evidence that will be necessary to satisfy any particular exemption criterion. However, ERA acknowledges that the State regulatory authorities administering the outdoor lighting programs may certainly make such findings as the one suggested by the comment and may accept such evidence as they deem adequate to meet any pertinent exemption criteria, where they believe their action is warranted and is consistent with the purposes of FUA.

ERA is, therefore, adopting the proposed revisions to the § 516.46 exemption with the modification discussed above. It should also be noted, that since the optional criteria proposed for subsection (c) of the safety exemption (§ 516.44) were not adopted, all petitioners seeking exemptions on the basis of expense related factors of compliance with the FUA prohibitions will now be limited to application only under § 516.46.

III. Comments Beyond the Scope of the Notice

A number of comments were received that were beyond the scope of the Notice and often beyond ERA's authority under section 402 of FUA. Consequently, such comments will not be addressed in this rulemaking proceeding.

[Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act (42 U.S.C. 8301 *et seq.*)]

Issued in Washington, D.C. May 16, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

In consideration of the foregoing, Chapter II, Title 10 of the Code of Federal Regulations, Part 516, is amended as follows:

1. Paragraph (d) of § 516.11 is revised to read as follows:

§ 516.11 Definitions.

* * * * *

(d) The term "natural gas outdoor lighting fixture" means a complete stationary natural gas outdoor lighting unit.

* * * * *

2. Section 516.43 is revised to read as follows:

§ 516.43 Commercial lighting of a traditional nature.

(a) *Scope.* A person using natural gas for outdoor lighting which is used for commercial purposes and which is of a traditional nature and conforms with the cultural or architectural style of the area in which it is located, may petition for an exemption from the prohibitions set forth in §§ 516.20 and 516.21 of this rule. In the case of a petition for an exemption from the general prohibition on installation of natural gas outdoor lighting fixtures (§ 516.20), an exemption shall be granted only to replace a natural gas outdoor lighting fixture(s) which had been installed prior to November 9, 1978. Such replacement shall include:

(1) Replacement of an existing natural gas light; or

(2) Replacement of a natural gas light which does not presently exist but which existed at some previous time upon the specified property.

(b) *Criteria.* The criteria for an exemption on the basis of commercial lighting of a traditional nature shall be satisfied upon certification by the petitioner that the specifically identified natural gas outdoor lighting fixture(s), which is used for commercial purposes and which is of a traditional nature and conforms with the cultural or architectural style of the area in which

such light is located, presently exists or will be used to replace a natural gas lighting fixture of a traditional nature.

(c) *Stays.* An exemption request shall result in a stay from the prohibitions set forth in Subpart B of this rule if the petitioner has certified that the specifically identified natural gas outdoor lighting fixture(s) used for commercial purposes:

(1) is of a traditional nature and conforms with the cultural or architectural style of the area in which such light(s) is located, and

(2) presently exists or will be used to replace a natural gas lighting fixture of a traditional nature.

3. Paragraph (b) of § 516.44 is revised as follows:

§ 516.44 Safety of persons and property.

* * * * *

(b) *Criteria.* The criteria for an exemption on the basis of necessity to protect the safety of persons and property shall be satisfied upon a demonstration that an exemption for the natural gas fixture(s) is essential—

(1) To prevent an increase in the likelihood of bodily injury or damage to property;

(2) To prevent an increase in the likelihood of the occurrence of crime in the location served by the light; or

(3) Because other existing lighting in the location does not provide lighting adequate to insure conformance with American National Standards Institute (ANSI) Standard No. D 12.1, "The American National Standard Practice for Roadway Lighting."

* * * * *

4. Section 516.46 is revised as follows:

§ 516.46 Compliance which entails substantial expense and would not be cost justified.

(a) *Scope.* A local distribution company, a direct industrial customer, an individual user or an interested person may petition for an exemption from the prohibitions set forth in §§ 516.21 and 516.22 of this rule on the basis that compliance with the prohibitions entails substantial expense and would not be cost justified, if the natural gas use at issue was being supplied on November 9, 1978.

(b) *Criteria.* The criteria for an exemption on the basis of substantial expense shall be satisfied upon a showing by the petitioner that compliance with the prohibitions in § 516.21 or § 516.22 of this rule would:

(1) Entail substantial expense; and

(2) That such expense would outweigh the benefits to be derived from compliance.

[FR Doc. 80-15922 Filed 5-22-80; 8:45 am]

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federal register

Friday
May 23, 1980

Part VII

Department of Labor

Occupational Safety and Health Administration

Access to Employee Exposure and Medical Records

Final Rules and Proposed Rulemaking

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Access to Employee Exposure and Medical Records

AGENCY: The Occupational Safety and Health Administration of the United States Department of Labor (OSHA).

ACTION: Final rule.

SUMMARY: This final occupational safety and health standard, promulgated today as a revised 29 CFR 1910.20, provides for employee, designated representative, and OSHA access to employer-maintained exposure and medical records relevant to employees exposed to toxic substances and harmful physical agents. Access is also assured to employer analyses using exposure and medical records. The final standard requires long term preservation of these records, contains provisions concerning informing employees of their rights under the standard, and includes provisions protective of trade secret information.

EFFECTIVE DATE: August 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Department of Labor, OSHA, Office of Public Affairs, Third Street and Constitution Avenue, N.W., Room N-3641, Washington, D.C. 20210 (202-523-8151). Copies of this document may be obtained at any time by request to the OSHA Office of Public Affairs at the address or telephone number listed above, or by contacting any OSHA regional or area office.

SUPPLEMENTARY INFORMATION:

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Part VII is a provision-by-provision discussion of the standard in lettered paragraphs corresponding to the lettered paragraphs of the standard. It provides a brief summary of each provision and the evidence and rationale supporting it. Part VIII follows with a reference to the authority for the standard, the signature of the Assistant Secretary, and then the standard itself. References to the rulemaking record in the text of the preamble are in parentheses, and the following abbreviations have been used:

1. Ex. : Exhibit number to Docket H-112.

2. Tr. : Transcript page number.

This occupational safety and health standard is issued pursuant to sections 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 ("The Act") (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), the Secretary of Labor's Order 8-76 (41 FR 25059) and Title 29 of the Code of Federal Regulations (CFR), Part 1911. It amends Part 1910 of 29 CFR by revising 1910.20, to be entitled "Access to employee exposure and medical records," and by making conforming amendments to existing occupational safety and health standards in sections 1910.440, 1910.1001-.1046, and 1990.151-.152. The standard applies to employment in all industries covered by the Act except agriculture.

The agency has reviewed the provisions of this action pursuant to the National Environmental Policy Act of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), and has determined that no significant environmental impact will result from the implementation of this standard.

B. History of proceedings

1. *The interim final rule.* On July 19, 1978, OSHA published in the **Federal Register** an interim final rule entitled "Preservation of Records" (29 CFR 1910.20; 43 FR 31019) which required employers to preserve all employee exposure and medical records, and to make them available, upon request, to OSHA and the National Institute for Occupational Safety and Health (NIOSH). OSHA indicated that the interim final rule would be superseded by a final rule promulgated after informal rulemaking. The final standard published today, when it goes into effect, will supersede the interim final rule.

2. *The proposal.* On July 21, 1978, a proposed rule entitled "Access to Employee Exposure and Medical Records" was published by OSHA in the **Federal Register** (43 FR 31371). The proposal provided for employees and their designated representatives to have access, upon request, to all relevant exposure records and all medical records of which the requesting employee was the subject or for which written consent had been obtained from the subject of the records. The proposal further provided OSHA and NIOSH with access upon request to employee exposure and medical records. In addition, it included a retention period for employee exposure and medical records of at least the duration of employment with the employer plus five (5) years. There was also a requirement for employers to instruct employees annually of their rights of access under the proposed rule.

The proposal included within its scope all "employee exposure records" and "employee medical records," regardless of whether they were subject to specific occupational safety and health standards. It did not mandate, however, the creation of new records or reports, nor impose any new obligations

on employers to monitor or measure employee exposures, or provide medical surveillance or examinations. Neither did it establish mandatory requirements on the format or content of employee exposure records or medical records. The proposal reflected a recognition that exposure monitoring and medical surveillance are conducted by many employers at their own initiative and expense, and that employers keep records of the results of such monitoring and surveillance.

The purpose of the proposal was to make the data contained in these records available to employees, their representatives, NIOSH, and OSHA in order to promote the recognition of workplace hazards and the subsequent reduction of occupational disease. As stated in the July 21 notice (at 31371):

> The goals of occupational safety and health are not adequately served if employers do not fully share the available information on toxic materials and harmful physical agents with employees. Until now, lack of this information has too often meant that occupational diseases and methods for reducing exposure have been ignored and employees have been unable to protect themselves or obtain adequate information from their employers. By giving employees and their designated representatives the right to see relevant exposure and medical information, this proposal will make it easier for employees to identify worksite hazards, particularly workplace exposures which impair their health or functional capacity. Increased awareness of workplace hazards will also make it more likely that prescribed work and personal hygiene practices will be followed.

The July 21 proposal gave interested persons until September 22, 1978 to submit comments, views, and arguments on any issue raised by the proposal. Comments were specifically invited on: (a) whether any types of information in the medical records should be excluded either partially or totally from the disclosure requirements of the final rule, and (b) whether the proposed retention period for records was too long or too short. Docket H–112 was established to receive all evidence concerning the proposal, and a total of 211 initial comments were received.

3. *The hearings.* Based on the widespread interest expressed in the proposal, OSHA announced in the **Federal Register** on October 6, 1978 (43 FR 46322) a schedule of informal public hearings. Public hearings were conducted under OSHA's procedural regulations for rulemaking (29 CFR Part 1911). They were presided over by Administrative Law Judge J. F. Greene, and all participants were afforded the opportunity to present oral testimony and to question other witnesses. The hearings were held from December 5–8, 1978, and January 3–5, 1979, in Washington, D.C.; from December 12–13, 1978, and January 9–10, 1979, in Chicago, Illinois; and on December 15, 1978, in San Francisco, California. A total of 88 interested individuals and organizations testified at these hearings. Hearing participants were given until February 9, 1979, to submit additional evidence and factual material, and until March 1, 1979, to submit post-hearing comments or arguments. This final deadline was later extended to March 30, 1979 by notice given in the **Federal Register** on February 27, 1979 (44 FR 11096).

4. *The administrative regulations.* In conjunction with this rulemaking a separate docket, Docket No. H–112A (Ex. 167 to Docket H–112), was created for materials and comments relating to OSHA's proposed administrative regulations concerning its own access to and handling of employee medical records. These regulations were initially developed as proposed administrative guidelines, and were entered into the public record prior to the public hearings on the records access proposal. These regulations have been revised and published today in the **Federal Register** as a companion document to this standard.

5. *The record.* The public record to the proposed rule was certified by Judge Greene on May 1, 1979. The record consists of all material submitted to the OSHA Docket Office, Docket No. H–112, by either OSHA or the public, including: (a) comments on the July 21 proposal, (b) background materials collected by OSHA, (c) notices of intent to appear at the public hearings, (d) pre-hearing submissions of testimony and evidence, (e) verbatim transcripts of the public hearings, (f) hearing exhibits, and (g) post-hearing comments. The views of a wide range of employees, businesses, trade and medical associations, international and local labor unions, physicians and other health professionals, legal experts, and public interest groups are represented in the public record. Additional information referenced in this preamble has been added to the record. Copies of the official list of items in the total record, as well as the items themselves, are available from the OSHA Docket Office, Docket Nos. H–112 and H–112A, Room S–6212, U.S. Department of Labor, 3rd Street and Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 523–7895.

II. Summary

A. Overview of the Purposes of the Standard

The fundamental reasons for this standard are the agency's judgments, based on experience, expertise, and the rulemaking record, that employee exposure and medical records are critically important to the detection, treatment, and prevention of occupational disease, and workers and their representatives need direct access to this information as well as to analyses of these records. Representatives of OSHA also need access to this information to fulfill responsibilities under the Occupational Safety and Health Act. The terms "employee exposure record" and "employee medical record" are defined and discussed at length in the Summary and Explanation portion of the preamble, but the core concepts of these terms are simple. Employee exposure records reveal the identity of, and extent of exposure to, toxic substances or harmful physical agents. Employee medical records contain individual health status information which may indicate whether or not an employee's health is being or has been impaired by exposure to toxic chemicals or harmful physical agents. If workers and their representatives are to play a meaningful role in detecting, treating, and preventing occupational disease, they must have the right and opportunity to learn: (1) what they are or were exposed to on the job, (2) what are or were the levels of exposure, and (3) what are or were the health consequences of these exposures. This standard simply establishes rights of access to this basic information by employees, designated representatives, and OSHA representatives, while at the same time affording appropriate privacy and confidentiality protection against uninvolved third parties.

The most immediate purpose behind this standard is to enable workers to play a meaningful role in their own health management. The individual worker has the greatest self-interest in maintaining his or her life and well-being. Sound public policy dictates that workers be afforded a central role in the detection and solution of health problems, as there are no assurances that anyone else will protect their health with equal vigor or determination.

Access to exposure and medical information will enable workers and their representatives to become directly involved in the discovery and control of occupational health hazards. Access will enable workers to uncover patterns of health impairment and disease.

Workers will be able to link specific adverse health effects with exposures to specific toxic substances, and investigate the possible causes of known patterns of disease. Once an occupational health problem is discovered, access to records can assist workers in their efforts to hasten control of the problem. This worker involvement to implement controls can take many forms, such as discussions with employers, collective bargaining remedies such as grievances or new contract provisions, or complaints to agencies such as OSHA and NIOSH.

Direct access to exposure and medical data will also enable an employee's personal physician to diagnose, treat, and possibly prevent permanent health impairment. Exposure and medical information can substantially assist a physician's evaluation, such as where previously recorded baseline medical information can be compared to current health status to ascertain whether and how health has declined over time.

Where the dangers of exposure to a toxic substance or harmful physical agent are known, worker access to information will also serve to decrease the incidence of occupational health problems. An individual worker's personal actions can greatly affect the extent of exposure to a toxic substance. Efforts are often made to control worker exposure to toxic agents through the use of respirators, protective work clothing, and careful personal hygiene (showers, washing hands and face before eating, etc.). Work practices which strive to minimize dispersal of toxic substances (e.g., immediately storing dust laden scrap material in closed containers) are also important. All of these control techniques depend on worker cooperation—cooperation which will best be assured when a worker knows the identity of hazardous substances he or she faces on the job, the magnitude of exposure, and the potential health consequences of this exposure.

Access to exposure and medical records, and long term preservation of these records, will also facilitate formal occupational health research. Groups of employees and unions can use the access rights of this standard to make medical and exposure information available to university and private organization researchers.

In addition, it is important to observe that worker access to exposure and medical information is important to the effectiveness of six explicit employee rights established by the Occupational Safety and Health Act. It is the agency's judgment that substantial occupational health benefits will result from improving the ability of workers to make beneficial use of these statutory rights. Access to information is first of all crucial to the effectiveness of the section 8(f)(1) right of employees and their representatives (29 U.S.C. 657(f)(1)) to complain to OSHA about perceived safety and health problems and obtain a prompt inspection of the worksite. Access gives meaning to the section 8(c) right of employees and their representatives to accompany OSHA during plant inspections (29 U.S.C. 657(e)) in order to identify where and how various toxic substances are used, which plant operations generate the greatest exposures, and otherwise help OSHA conduct a thorough inspection. Access will enable workers to better exercise their twin rights under section 10(c) to contest the reasonableness of abatement periods proposed by OSHA, and to participate as parties in Occupational Safety and Health Review Commission adjudicatory proceedings (29 U.S.C. 659(c)). A fifth statutory right enhanced by worker access to record is the section 20(a)(6) right of workers to request a workplace Health Hazard Evaluation (HHE) by NIOSH (29 U.S.C. 669(a)(6)). Lastly, the knowledge learned by workers due to access to medical and exposure records will also heighten the impact of the employee training and education programs currently being funded by OSHA pursuant to section 21(c) of the Act (29 U.S.C. 670(c)).

Having highlighted the benefits of direct worker access to medical and exposure records, it is appropriate to consider the kinds of records that employers generate, and the current practices concerning employee access to these records. Medical records relevant to potential occupational disease are generated in a variety of contexts. Occupational medicine is practiced in a wide variety of settings and encompasses a wide range of medical services. The range of experience includes company-owned hospitals capable of performing most primary care, sophisticated in-house medical departments with epidemiological, toxicological, and medical expertise, medical programs consisting only of an on-site occupational health nurse, and contractual arrangements with industrial health clinics or outside physicians (either on a retainer or fee-for-service basis). There is a high degree of variation in the medical services provided by employers, and as a result, employee medical records can contain a variety of items relevant to occupational disease issues.

With respect to environmental monitoring records, approximately 22% of all industrial employees are employed in plants where monitoring is regularly performed, with the percentage being approximately 40% for all manufacturing employees. There is a wide fluctuation in the extent of regular monitoring depending on employer size and SIC code. It is to be expected that far greater percentages of employees are covered by infrequent, if not by regular, exposure monitoring. For example, 52% of manufacturing industry employees work in plants which receive industrial hygiene services. Irrespective of the exact percentages involved, it is clear that a substantial portion of American workers work on jobs for which exposure monitoring is being conducted.

Industrial recordkeeping practices also appear to vary widely as to the extent to which employees are provided direct access to medical and exposure records. OSHA concluded on the basis of the record and its own experience that denial of direct, unrestricted employee access to exposure and medical information is commonplace, if not the universal practice of industry. This standard is necessary in those many situations where access is routinely denied.

The final standard also reaffirms OSHA's right of access to employee exposure and medical records. OSHA is a public health agency with regulatory responsibility "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions. . ." (Section 2(b) of the Act, 29 U.S.C. 651). Access to employee exposure and medical records will at times be necessary for the agency to accomplish numerous statutory responsibilities, and all comprehensive occupational health standards promulgated under the Act to date have included provisions guaranteeing OSHA access to exposure and medical records.

B. Summary of the Standard

The "Purpose" paragraph of the final standard creates no substantive requirements, but expresses the agency's intentions in promulgating the standard. The final rule assures access by employees and their representatives, and codifies OSHA access to relevant employee medical and exposure records. The goal behind access is to yield both direct and indirect improvements in the detection, treatment and prevention of occupational disease. This is articulated as a guide to application and interpretation of the entire standard, and reflects the many ways in which employees, their representatives, and OSHA are likely to use access rights.

The final standard applies to employers having employees exposed to toxic substances or harmful physical

agents. Since the rule seeks to yield benefits in the detection, treatment and prevention of occupational disease, coverage is appropriately limited to records relevant to employees currently or previously exposed to toxic substances or harmful physical agents.

The final standard applies to all relevant exposure, medical, and analysis records whether or not they are related to specific occupational safety and health standards. In so providing, the agency rejected suggestions that there be an exclusion for exposure and medical records created prior to the effective date of the standard.

The standard applies to records generated or maintained by contractors of the employer as well as by in-house employees. The final standard also applies to each employer who "makes, maintains, contracts for, or has access to" exposure or medical records, and it is the agency's intention that the standard be given a broad application in this respect.

The final standard applies to each "general industry, maritime, and construction employer" of employees exposed to toxic substances or harmful physical agents. Having considered the evidence provided, the agency concluded that there was no rational basis for categorically excluding any broad class of employers from coverage by the final standard, such as small businesses or employers with multiple or transient worksites or transient workforces. The final standard does not apply to agricultural employment, but OSHA is proposing in a separate **Federal Register** notice to extend the scope of the final standard to these workplaces.

The definitions paragraph of the final standard defines eleven key terms. "Access" means the right and opportunity to examine and copy. The term "analysis using exposure or medical records" is defined as "any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records, or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis."

In order to enable each worker to utilize his or her rights of access to records, the final standard permits an employee to designate representatives to exercise access rights. Enabling an employee to designate anybody he or she desires to entrust with access rights will most effectively achieve the purposes of the Act and this standard. The employee should ultimately be the judge of who can make a positive contribution to his or her well-being by access to records. As a result, no limitation is placed on who the employee may choose to act as a "designated representative." Recognized or certified collective bargaining agents, who have the statutory authority to represent the interests of employees within the bargaining unit on health and safety matters, are automatically considered to be "designated representatives" by virtue of their special bargaining status. Under the standard, this gives them the right of access without individual employee consent to employee exposure records and analyses using exposure or medical records, but requires that they obtain specific written consent before gaining access to medical records.

The final standard defines "employee" as a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. The term "employer" means a current employer, a former employer, or a successor employer.

"Employee exposure record" is defined as encompassing four kinds of records. First are environmental (workplace) monitoring or measurement records along with associated collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained. Second are those biological monitoring results which directly access the absorption of a substance or agent by body systems. Third are material safety data sheets. Fourth, in the absence of the above, is any other record which reveals the identity of a toxic substance or harmful physical agent.

The term "employee medical record" means the entire contents of a record concerning the health status of an employee which is made or maintained by health care personnel or a technician. Information generated by medical personnel is covered irrespective of how and where the information is presently maintained. The use of "made" is intended to assure access in situations where medical information is held by non-medical management departments or personnel. The use of "maintained by" medical personnel is intended to assure access to the entire contents of medical files, not just to information created by medical personnel. Once information from any source gains enough importance to be included in the medical file, that information becomes subject to the retention and access provisions of this rule. The use of "technician" is meant to cover situations where, for example, occupational health questionnaires or biological monitoring tests such as pulmonary function or audiometric testing are conducted by persons who, strictly speaking, may not be considered as health care personnel.

In defining "employee medical record," the agency decided that no meaningful distinction could be made between "occupational" and "non-occupational" information. The symptoms of occupational disease often closely mimic those of non-occupational diseases. The human body is limited in the number of ways it can react to chemical insults, and many of these responses parallel symptoms associated with a variety of other insults and disorders. This, plus our limited knowledge of occupational disease, makes it impossible to classify in advance what pieces of information may or may not be of "occupational" significance.

The final rule does, however, specifically exclude three kinds of information from the definition of "employee medical record": Certain physical specimens, certain records concerning health insurance claims, and certain records concerning voluntary employee assistance programs.

The phrase "exposure to toxic substances or harmful physical agents" is defined in two parts. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure. Exposure does not, however, include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

The term "toxic substance or harmful physical agent" is defined as any chemical substance, biological agent or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo- or hyperbaric pressure, etc.) for which there is evidence of harmful health effects. Four general criteria are established for determining whether evidence of harmful health effects exist. First, the standard applies to any chemical substance, biological agent, or physical stress which is regulated by any Federal law or rule due to a hazard

to health. Second, the standard applies to any chemical, biological agent, or physical stress which is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS), an annual compilation of all known toxic substances by chemical name and common synonym, along with the concentrations at which toxicity is known to occur. Third, the standard applies to any chemical, biological agent, or physical stress which "has yielded positive evidence of an acute or chronic health hazard in human, animal or other biological testing conducted by, or known to, the employer." Finally, the standard applies to any chemical, biological agent, or physical stress which has a material safety data sheet indicating that the material may pose a hazard to human health. This document generally accompanies the purchase of a chemical used in industrial processes, and serves to warn users of toxic properties of the product.

In addition to the preceding terms, "record" is defined to encompass any item of information regardless of the form or process by which it is maintained. Finally, since the standard enables designated representatives to obtain access to an employee's medical records only upon the specific written consent of the employee, the term "specific written consent" is carefully defined. This definition minimizes the possibility of invasion of an employee's privacy by precluding blanket and perpetual authorizations. To give specific written consent, an employee will have to indicate in writing who is being authorized to disclose record information, who may have access to it, and the general nature of the information to be disclosed. If the employee wishes, he or she may specify information which is not authorized to be disclosed and may place conditions on its use or redisclosure. In this way, it will be the employee who controls the amount and kinds of information available to the designated representative, and what the representative can do with it. A sample authorization letter is included as an Appendix to the standard.

The "Preservation of records" paragraph of the final standard provides that employee exposure records and analyses based on exposure or medical records must generally be preserved and maintained for at least thirty years, while employee medical records must be retained for at least the duration of employment plus thirty years. A minimal overall retention period of thirty years was adopted due to the very long latency periods characteristic of chronic occupational diseases. Not all records subject to the rule, however, must be retained for the thirty year period. Health insurance claims records which are maintained separately from the employer's medical program and its records need not be retained for any period of time. In addition, certain background information to employee exposure records must be maintained for only one year. Also, with the exception of x-rays, employers are provided maximum flexibility to microfiche, microfilm, computerize, or otherwise retain records in whatever fashion is most desirable to the employer.

The "Access to records" paragraph of the final standard governs the mechanics and nature of access to records. Employee and designated representative access must be provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

This permits employers to establish orderly procedures for providing access so that work schedules are not unduly disrupted and workers not unduly inconvenienced. Employers are also provided flexibility in responding to requests for copies of records. On the first occasion that an employee or designated representative requests a copy of a record, the employer has three choices. The employer can assure the (1) a copy is provided without cost, (2) the necessary mechanical copying facilities (e.g., photocopying) are made available without cost so that the employee or representative can make an exact copy, or (3) the record is loaned for a reasonable time to enable an exact copy to be made. Administrative costs can generally be charged for subsequent requests for a copy of a record.

As to the nature of access rights, employees and their designated representative (including collective bargaining agents) are provided access to "relevant" employee exposure records. An employee first is assured access to records of the employee's past or present exposure to toxic substances or harmful physical agents. Second, an employee is assured access to "records of other exposed employees with past or present job duties or working conditions related to or similar to those of the employee." Access to records of other employees is provided in recognition of the fact that most environmental monitoring using personal samples is conducted on a representative sample basis. The third kind of "relevant" employee exposure records are records containing exposure information concerning the employee's workplace or working conditions. These records would include area, grab, or wipe samples which would not specifically characterize the exact exposure of any one employee. The fourth kind of "relevant" records are records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

With respect to employee medical records, employees are afforded direct access to their own medical records, subject to one limited exception applicable to potentially harmful information involving terminal illnesses or psychiatric conditions. Access of an employee is provided only to medical records of which the employee is the subject; in all other cases specific written consent must be obtained. A designated representative of an employee may gain access to an employee's medical records only through the specific written consent of the employee. This restriction applies to all designated representatives including collective bargaining agents.

The final standard encourages physicians on behalf of employers to make recommendations to employees and designated representatives in connection with the exercise of access rights. The physician may recommend a consultation for the purposes of reviewing and discussing requested records, or may urge that a summary of material facts and opinions be accepted in lieu of the records requested. Other possible recommendations would include the physician urging that requested records be provided only to a physician or other designated representative.

The final standard also gives physicians limited discretion to deny direct employee access to portions of medical records. In the narrow situation where a specific diagnosis of a terminal illness or psychiatric condition is involved, there may be some cases where direct employee/patient access to this information could possibly prove harmful to the employee's health. In recognition of this possibility, the final rule adopts the recommendation made by the Privacy Commission. If a physician representing the employer believes the direct access to this information could be detrimental to the employee's health, the employer may deny the employee's request for direct access to this information. The employer must, however, inform the employee that access will be provided to a

designated representative having specific written consent.

In additon, the final standard authorizes the deletion from requested medical records of the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

Employees and designated representatives are also provided access to analyses using exposure or medical records. As to an analysis using employee medical records, however, access without specific written consent is provided only to the extent that the analysis does not report the contents of employee medical records in a personally identifiable form. The employer must, where feasible, delete personally identifiable information from the analysis before providing access. Once aggregate medical information (as well as exposure information) is reported in a non-identifiable form such as in most research studies, there are no substantial privacy interests to be served by preventing direct access by those most interested in the analyses. Accordingly, the final standard provides for access to analyses without any prior showing of written consent by each employee whose records are part of the analyses.

The final standard also reaffirms OSHA's access to employee exposure records, medical records, and analyses of these records. OSHA access to records must be provided immediately upon request, and this access is not conditioned upon employee consent. Due to the strong personal privacy interests associated with employee medical records, however, the agency is simultaneously promulgating strict rules of practice and procedure governing OSHA access to employee medical records (and any analyses using employee medical records which report the contents of medical records in a personally identifiable form). These administrative regulations specify the mechanisms by which the agency will seek access to medical records, and how the records will be protected once in the agency's possession.

The "Trade secrets" paragraph of the final standard addresses industry concerns about worker and designated representative access to records containing trade secrets. On the basis of the total record, the agency concluded that workers have a fundamental need to know the identity of and extent of exposure to toxic substances and harmful physical agents, and any resulting health effects, regardless of whether or not the information is a trade secret. The final standard is founded in part on the judgment that employers must not as a matter of public health policy be permitted to deny worker access to this information which is needed for the purposes of detecting, treating, and preventing occupational disease. Under the final standard, access is afforded to chemical and physical agent identity, level of exposure, and health status information regardless of employer trade secret claims. The final standard, however, has been structured to accommodate trade secret concerns where protection of this information does not conflict with the overriding purposes of the standard. Although identities, levels of exposure, and health status data may not be withheld, the employer may delete any other trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified of the deletion. In addition, the provisions of the final standard minimize possible abuse by permitting employers to condition access to trade secrets upon written agreements not to misuse this information.

Other paragraphs of the final standard contain requirements for employers to: (1) inform employees of their rights under the standard, (2) transfer records to successor employers when employers cease business operations, and (3) notify NIOSH of the impending destruction of records covered by the standard.

C. Major Factual/Policy/Legal Issues

In promulgating this final standard, OSHA not only determined that broad worker and designated representative access to records would serve important occupational health purposes, but also carefully evaluated the various arguments which were raised for and against OSHA's proposed means for achieving these objectives. Most employer participants, for example, opposed the standard's access principles on a variety of grounds. Concerns were voiced about potential harm to employees and the occupational physician-patient relationship should direct employee and designated representative access be provided to medical records. Arguments were made that direct access could prove to be genuinely harmful in certain cases; thus the employer's physician should retain discretion as to what information is released, and to whom. On the basis of the record and its own judgments, OSHA concluded that reliance on physician discretion to disclose information to an employee, or reliance solely on physician-to-physician transfers of medical records, were inadequate responses to the needs for direct worker access.

Unrestricted patient access to medical records has been a major public policy issue during the past decade, and the trend throughout the nation both on the State and Federal level has been to provide direct patient access to medical records. The final standard's access principles draw support from the recommendations of such bodies as the 1976 Privacy Protection Study Commission, the National Commission on the Confidentiality of Health Records, and the American Medical Records Association. It is OSHA's judgment that there is no basis for anticipating harm to an employee from direct access to medical information as provided in the final standard. The rare occasion where direct access may possibly be harmful can adequately be dealt with by the standard's provisions concerning physician consultations and access through a designated representative.

Employee and designated representative access to both medical and exposure records were also opposed on the grounds that these records would often be misinterpreted and misunderstood. Statements were made that most employees are incapable of understanding the highly technical language, abbreviated shorthand and illegible writing that is often found in medical records. The likelihood of misinterpretation leading to unnecessary anxiety or inappropriate action was therefore considered great. OSHA agrees that professional evaluation and interpretation will often be important, but does not agree that the possibility of occasional misunderstanding should enable employers to deny access to either medical or exposure records. The solution reflected in the final rule is to provide full worker access to the records, while at the same time encouraging the employer to offer whatever professional interpretation the employer feels is necessary. The worker, however, retains the right to personally evaluate the record, and have independent analysis conducted by professionals and non-professionals alike. If a worker is incapable of understanding something in a medical or exposure record, OSHA expects that the worker will naturally seek the assistance of someone more knowledgeable whom he or she trusts.

Arguments were also made that provisions allowing designated representative access to medical records would seriously interfere with the physician-patient relationship due to the

open-ended nature of the proposal's written consent process. Objections to the proposal focused on potential invasions of an employees's privacy expectations from unrestrained third party access to identifiable medical records. To preclude unrestrained third party access, the final standard conditions the access of designated representatives to employee medical records upon the specific written consent of the employee. The elements of specific written consent are a reflection of recommendations in the record, including those of the Privacy Commission and the American Medical Records Association.

As to who can be a designated representative, the final standard embodies the view that once specific written consent is obtained, no additional restrictions are needed, such as limiting access to physicians or industrial hygienists. Since it is the employee's right to have access to the complete record, the employee should, by the consent procedure, control the conditions of disclosure and redisclosure.

Arguments were also made that broadened access to medical records would inevitably impair the creation, expansion and effectiveness of occupational medical programs. It is OSHA's judgment that these predictions are exaggerated, since no concrete evidence was presented which indicated that the standard would have a negative impact on corporate efforts to provide occupational health programs. Corporate witnesses stated that, in fact, there would likely be no reduction in their occupational medical efforts. In addition, the record supports the view that direct patient access to medical records actually promotes the therapeutic relationship between physician and patient.

The most significant issue posed by OSHA access to employee records concerns a potential clash with the right of privacy vis-a-vis employee medical records. Employee medical records subject to this standard may sometimes contain intimate details concerning a person's life; e.g., disease experience, psychiatric disorders, venereal disease, abortion, alcohol or drug abuse, sexual preferences, family medical problems, etc. OSHA access to complete medical records was felt by numerous participants to raise the threat of misuse since harmful medical information could be disseminated in a way that would adversely affect the employee. It was also argued that governmental access to personal medical information threatens to destroy expectations of confidentiality and severely impair medical programs.

There was universal agreement that if OSHA obtained access to employee medical records, this access should be accompanied by stringent internal agency procedures to preclude abuse of personally identifiable medical information. Provided these procedures were established, many participants, including all union and employee participants, endorsed unconsented OSHA access to employee medical records for occupational safety and health purposes.

Having considered the record, and analyzed the legal issues involved, the agency decided to include a requirement in the final standard providing for unconsented OSHA access to employee medical records. As recognized by numerous participants, acquiring consent is not always a realistic possibility. Large numbers of people may be involved, emergency situations may not permit delay, the residences of terminated employees may be unknown, or an absence of consent may decrease the statistical validity of a study. In so providing for unconsented agency access, OSHA also agrees with the views of several participants that strong public health considerations must weigh heavily when balanced against the privacy interest in precluding unconsented access.

Even though OSHA has legal authority to seek unconsented access to identifiable medical records, the agency concluded that this authority should, as a matter of sound public policy, be exercised with great care. To protect the employee's privacy interests, OSHA recognizes the need for stringent internal procedures to: (1) limit the circumstances in which identifiable medical records are examined or obtained by OSHA personnel, and (2) control use of identifiable medical information once in the agency's possession. In order to effectuate these decisions, the agency is simultaneously promulgating detailed procedural regulations governing all aspects of OSHA examination and use of personally identifiable medical records.

In promulgating the final standard, OSHA also carefully considered the relevant legal authority issues. The Occupational Safety and Health Act provides ample legal authority for employee, designated representative, and OSHA access to medical and exposure records. The Act created OSHA as an expert administrative agency with broad regulatory powers to fashion protective regulations concerning occupational injury and disease. This final standard substantially advances the central purpose of the Act articulated in Section 2(b)—"to assure so far as possible every working man and woman in the Nation safe and healthful working conditions" (29 U.S.C. 651). The standard furthermore flows directly from, and is fully consistent with, the Act's express language.

By this rule, OSHA has adopted a generic approach to remedying the problems of access to exposure and medical records. Sections 6(b), 3(8), 2(b)(3) and (9), 8(c)(1), and 8(g)(2) of the Act provide for the promulgation of such occupational safety and health standards. Employee, designated representative, and OSHA access to records directly builds upon several express provisions of sections 6(b) and 8(c). The Secretary believes that a generic approach to rulemaking in this situation is a necessary and reasonable approach. The problems of access to information are common to a wide array of toxic substance exposures and industrial settings. The agency therefore rejects contentions that have been made by some in industry that the Act limits the Secretary to substance-by-substance rulemakings as to access issues.

The standard's resolution of the trade secret issue as it pertains to employee and designated representative access to records has also been made with appreciation for the role of trade secrets in American law. Based on careful analysis of the legal issues involved, the agency concluded that its authority to promulgate this standard can serve to pre-empt state law trade secret interests if necessary or appropriate to promote occupational safety and health. However, rather than totally pre-empt state law trade secret interests, the agency chose to seek means to accommodate the competing interests. But, where the competing interests irreconcilably clash, the interest in employee safety and health prevails.

The agency also analyzed the legal right of privacy issues posed by OSHA access to employee medical records. Having considered the relevant case law, OSHA is confident that agency access to personally identifable employee medical records is constitutionally and statutorily permissible when accompanied by strict protective measures such as the administrative regulations OSHA is promulgating simultaneously with this standard. It is also appropriate to point out that the physician's traditional duty of confidentiality owed to medical information, deriving from the patient's right of privacy in the information, is never absolute and may be overridden

by a supervening public interest such as the one asserted in this standard.

Numerous employers complained of the perceived economic burdens of the standard, but economic concerns were not a major issue in the rulemaking. No participant argued that the administrative costs involved rendered the standard economically infeasible, nor is there any evidence in the rulemaking record which could support such a suggestion. The final standard has been carefully drafted to provide employers substantial flexibility as to how they preserve records subject to the standard, and how these records are made available to employees and their designated representatives. The final rule neither mandates the creation of new records or reports, nor imposes independent obligations on employers to monitor or measure employee exposures. The standard does not require employers to provide medical surveillance or examinations, nor does it establish other mandatory requirements as to the format or content of exposure and medical records. Therefore, while administrative costs will be incurred in preserving records and in providing access to them over and above current practices, there is no basis for concluding that the standard will pose substantial economic burdens on industry.

III. Purposes and Need for the Standard

A. Introduction

The fundamental reasons for this standard are the agency's judgments, based on experience, expertise, and the rulemaking record, that employee exposure and medical records are critically important to the detection, treatment, and prevention of occupational disease, and workers and their representatives need direct access to this information and to analyses of these records. Representatives of OSHA also need access to this information to fulfill responsibilities under the Occupational Safety and Health Act. The terms "employee exposure record" and "employee medical record" are defined and discussed at length in the Summary and Explanation portion of the preamble (VII.C, *infra*), but the core concepts of these terms are simple. Employee exposure records reveal the identity of, and extent of exposure to, toxic substances or harmful physical agents. Employee medical records contain individual health status information which may indicate whether or not an employee's health is being or has been impaired by exposure to toxic chemicals or harmful physical agents. If workers and their representatives are to play a meaningful role in detecting, treating, and preventing occupational disease, they must have the right and opportunity to learn: (1) what they are or were exposed to on the job, (2) what are or were the levels of exposure, and (3) what are or were the health consequences of these exposures. This standard simply establishes rights of access to this basic information by employees, designated representatives, and OSHA representatives, while at the same time affording appropriate privacy and confidentiality protection against uninvolved third parties.

Due to the importance of this standard and the controversy that has been generated, it is appropriate to discuss at the outset the occupational safety and health purposes and need for this rule.

B. Worker Participation in Personal Health Management

The most immediate purpose behind this standard is to enable workers to play a meaningful role in their own health management. It is the individual worker who has the greatest self-interest in maintaining his or her life and well-being. The problems presented by occupational disease are enormous and are complicated by such factors as our limited medical knowledge, the typically long latency periods between exposure and the onset of disease, the finite resources available to correct even recognized problems, and the institutional and societal forces which impede and delay changes in traditional industrial practices (*See*, Weiner, Ex. 9A, pp. 1–2, 5–6). As a result, many workers continue to be exposed to toxic substances and harmful physical agents to an extent which may severely impair their health.

Sound public policy dictates that workers be afforded a central role in the detection and solution of health problems, as there are no assurances that anyone else will protect their health with equal vigor or determination. Employers have a legal and moral obligation to protect the health of their employees, but the problems which led to passage of the Occupational Safety and Health Act, and the high rates of occupational disease and death among groups such as former asbestos workers, are reflections of the fact that, by itself, industry on the whole does not adequately protect worker health. Governmental agencies such as OSHA and NIOSH were created to improve occupational safety and health, but due to limited resources and other institutional constraints, these agencies have just begun to have a significant impact on the massive problem of occupational disease. Workers thus have a vital interest in becoming directly and actively involved in occupational health matters. This standard serves to assure that workers who seek to become involved will at least be able to learn basic exposure and medical information.

Several participants in the rulemaking proceeding highlighted the fundamental interest of workers in access to exposure and medical information. As voiced by one employee from an electronics plant:

> It is the workers who are interested in monitoring the workplace. We are the ones who have a stake in what happens to us. the board of directors doesn't work with those chemicals. And I can't see why you would want to keep that kind of information out of the hands of the people who have got a lifelong interest in keeping their workplace safe. And with that I want to say that I know that—and our committee we receive a lot of requests from workers saying they want to understand and investigate their workplaces; they don't want to be in the dark; they want to find out what these symptoms are caused by. And they are more than serious and they are pretty up front, right?—and they want to live. They are working to live, not die. They are working to support families that are healthy, not children that are born with any kind of problems related to what their parents worked with. And this kind of ruling could really make a difference for workers. (Lamborn (Electronics Safety and Health Project), Tr. 1603–4)

Dr. David Wegman of the Harvard School of Public Health and University of Massachusetts Medical School observed:

> The access of the worker to his or her medical records is especially important. This is true because the worker ultimately is responsible for his or her own health. They need the information that is contained in medical records to fulfill this responsibility to themselves. This is consistent with the preamble to the constitution of the World Health Organization which defines health as a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity. For any individual to try to promote his or her own health requires sufficient information that he or she can act to build toward improved growth and health, not simply act in the presence of illness. The individual's right to control his or her own destiny is really the foundation upon which the principles of preventive medicine are based. (Dr. Wegman, Ex. 10, p. 8)
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> In the absence of having a full understanding of the condition of health and disease in an individual, I think the individual plays a very little, small role in promoting their own health. And I think that the medical record provides a [route] to this knowledge that just isn't available in any other way. (Dr. Wegman, Tr. 203)

Peter Weiner, Chief Counsel of the California Department of Industrial Relations, also stressed this fundamental worker need to know:

Whatever we in government are able to accomplish, experience in the workplace will be the touchstone of occupational health action for some time to come. In giving workers the right to accompany OSHA inspectors on walkarounds, Congress recognized that workers often have the most practical knowledge of the hazards they face. Yet in the uncertain world of predicting occupational health hazards, the worker has all too often been kept in the dark. . . . Miners of yesteryear at least had canaries to warn them of dangers in the mine. Today, all too often, workers are themselves the canaries. . . . *It is time we recognized generally that workers have a right to know the hazards they face on the job.* They have a right to all information that may be relevant to protecting themselves, their fellow workers, and their families. As a DBCP worker told us, "the competitors ain't our worry. Our lives is what we're worried about." Workers have an absolute need to know this information in order to bargain collectively to reduce exposures, and to assure compliance with stringent safety and health rules in the workplace. (Ex. 9A, pp. 2–4) (emphasis in original; footnote omitted)

This standard will enable workers to play a major role in their personal health management.

C. Worker Discovery of, and Efforts to Control, Occupational Health Hazards

Access to exposure and medical information will also enable workers and their representatives to become directly involved in the discovery and control of occupational health hazards. Access to exposure and medical records will better enable workers to uncover unknown patterns of health impairment and disease. Workers will be able to link specific adverse health effects with exposures to specific toxic substances, and investigate the possible causes of known patterns of disease. Once an occupational health problem is discovered, access to records can assist workers in their efforts to hasten control of the problem. This worker involvement to implement controls can take many forms, such as discussions with employers, collective bargaining remedies such as grievances, new contract provisions, or complaints to agencies such as OSHA and NIOSH.

Experience has shown that direct worker involvement has often played a major role in discovering occupational health problems. Three very concrete examples concern the discovery of the occupational health hazards posed by bischloromethyl ether (BCME), dibromochloropropane (DBCP), and NIAX catalyst ESN.

I think it is rather interesting in the extreme case where Robert Pontius, who worked at Rohm and Haas, was aware of 13 fellow workers who had died of lung cancer following coughing up blood, brought this to the attention of a physician who was investigating the 14 cases, including Robert Pontius, [and] made the first determination that bischloromethyl ether was a human carcinogen in the circumstances of exposure. Now Pontius had to rely on rather finite and endstage results; that is, the death from cancer, in order to make these associations. There are much earlier stages where these associations could be made if workers are in detail aware of their own work history and can share that knowledge with other workers as they see fit. (Dr. Wegman, Tr. 203–4)

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With DBCP, we were able to trace the cause of worker sterility only after workers became aware of the common pattern among them. It is possible that some of the tragic and irreversible sterility among DBCP workers could have been avoided had this pattern been evident earlier. (Weiner, Ex. 9A, pp. 3–4, 24)

In DBCP indeed the problem was perceived by the workers, and had it not been for their perceptions and discussions the problem would still be undiscovered. (Dr. Whorton, Tr. 273–274)

* * * * *

Another problem we [OSHA] are particularly concerned about is the tendency to introduce new chemicals without sufficient toxicological pretesting for acute and chronic effects. A dramatic example of a chemical without such testing happened just recently with the Union Carbide product NIAX catalyst ESN. I must say that while Union Carbide did not have toxicological data beyond the customary acute data, they did act responsibly by undertaking additional toxicological studies. Unfortunately, this occurred after the fact of workers becoming ill due to exposure in two different sites, one in Marblehead, Massachusetts and the other in Jessup, Maryland . . . Soon after the catalyst was introduced in a Massachusetts plastics plant a number of workers complained of bladder problems, weakness and tingling in their legs and impotency. When these workers went to their private physicians, their symptoms were diagnosed as prostate problems, bladder infections, or other diseases. By talking to one another at the plant, some of the workers became convinced that their health problems were work related. Finally, eleven employees went together to the Salem Hospital emergency room, to demand treatment and recognition of the problem as an occupational exposure. The hospital called Dr. David Wegman, an occupational health physician at the Harvard School of Public Health, who began investigating the problem.

At just about the same time, similar symptoms began appearing at a Baltimore plant using the same catalyst.

A Baltimore physician who began seeing patients from the plant, knew of the toxic effects of one chemical used there—TDI—and called Dr. Wegman, an authority on that chemical, and so, by chance, it was discovered that the two groups of workers were both exhibiting the same problems . . . NIOSH and OSHA were called in and it was determined that ESN was the causative agent—and a few weeks ago we [OSHA & NIOSH] issued a joint hazard alert. Union Carbide voluntarily stopped production of the catalyst and recalled existing stocks. (Statement of Assistant Secretary Bingham before the American Chemical Society, Ex. 170, p. 5–6; *See,* Dr. Wegman, Tr. 220–22)

(*See also,* Dr. Wegman, Ex. 10, pp. 9–10).

Access to records will not only facilitate the discovery of previously unrecognized patterns of occupational disease, but will enable workers to investigate potential occupational causes of clear patterns of disease.

Psychological problems resulting from the neurological effects of chemicals may be the common link uncovering a job-related hazard. In one benzene plant in Baltimore three workers in one department were diagnosed as having severe psychological disorders. Without the ability to obtain full medical records, workers would be hampered in their ability to follow up the possibility that a work exposure caused these symptoms. (Eller (ICWU), Tr. 732)

Access to exposure and medical records will enable workers to hasten the control of health problems as well as discover that problems exist.

In the presence of the adequate collection of environmental and personal exposure data and medical testing associated with such exposures, workers' access to the information would provide reasonably early the knowledge of the development of abnormalities and provide the workers the information to act on independent of any other person's action. (Dr. Wegman, Ex. 10, p. 6)

Dr. Wegman also gave this testimony:

It is my experience in my work, both with the Division of Occupational Hygiene [of the State of Massachusetts] and my research and teaching capacities at the Harvard School of Public Health, that when people know about the exposures that they have and know the risks associated with those exposures, they take much greater care in trying to control those exposures to the extent that their individual actions have some role . . . than they do if the material is presented to them as being not of significant health impact or if the material is not even described to them. An example of this was the case where I worked with [asbestos]. A local union working with the manufacturing of brake linings were not aware that asbestos was in the brake lining, and once it was brought to their attention the union leadership informed the membership. The membership recognizing the possible health effects became quite concerned about appropriate ventilation control, made it a major issue in discussions with management and as a result of this led to control of the asbestos exposures that were existing in that workplace which previously had been left uncorrected. (Dr. Wegman, Tr. 201)

(*See also,* Dr. Wegman, Ex. 10, pp.7–8).

Testimony in this proceding shows the numerous ways in which workers will use access rights under this standard to hasten the correction of occupational health hazards. Indeed, the active participation and testimony of the

many workers and local and international union officials who appeared at the public hearings is in itself strong evidence of worker desire and ability to obtain information and put it to good use. Several passages of the hearing transcript reflect the nature of worker testimony:

After just being on the union committee itself, we saw in an area that is called the drying room that men were having problems and had to get out of the area. And the company had told us there was no problems in the area. So from that point on it seemed like we had to check it out for ourselves because the company said there wasn't no problems. . . . I got a list of people, how long they were on the job, and then I started to interview to see what problems they were having. The people were having bleeding noses, holes in their noses, eye irritations and other problems. And at that point the company still hadn't done nothing. So from them I had to get more information to find out what was causing the problem. So I asked our international to help us and other technical people. At that point they told me we had problems with fluorides . . . If I would have had access to the information sooner as far as the materials being used and the medical records of some of the people affected in the area, we probably could have gotten action a lot sooner . . . (Herbst (ICWU), Tr. 721–22, 725; *See also* Tr. 722–25)

* * * * *

For instance, in International Harvester's Melrose Park plant workers in high noise areas in the plant are given annual hearing tests. Analysis by the union of this audiometric data could provide important insights concerning hearing loss in our plant. This would allow us, the union safety committee, working hopefully in cooperation with management to reduce noise levels or expedite temporary administrative controls in these departments where major hearing loss problems are occurring. We don't have that information and the company will not let us review the hearing test information. (Gaffney (UAW), Tr. 1323)

* * * * *

Well, upon receiving the sampling information, it would give me an idea of what spots are most hazardous and what to concentrate on first, and be able to inform the people, educate them, which I have taken steps already to do so by calling in the international safety department to educate people on what these types of exposures can lead to, and then if it be their will to go ahead with a grievance procedure and take steps to get this corrected. And if the grievance procedure, you know, if we failed there, then we [inaudible] OSHA. (Bergs (USWA), Tr. 1119–20)

* * * * *

Exposure records must not be permitted to become mere historical artifacts, sitting unattended in dusty archives while the hazards they document go uncontrolled. They have usefulness as tools and as with any tool they will be put to the best use by those who want to get the job done. It is employees, with their first hand experience with workplace conditions and their personal stake in the identification of danger, who are the driving force behind safety and health programs. It has become a truism to point out that the workers on the shop floor are often the ones with the most accurate sense of where the potential hazards exist . . . To deny workers the data necessary to distinguish between mere suspicion and accurate hazard recognition is a serious error. It has been our experience as a union with a particularly active health and safety program that employees who have gained access to exposure data have used it productively and aggressively to identify and control hazards. (Dr. Silverstein (UAW), Ex. 63, p. 12)

* * * * *

With regard to the need for ready access by individual workers or union representatives to exposure data, suffice it to say that such access will inevitably serve to motivate workers and their representatives to investigate and eliminate workplace hazards. OSHA will never have sufficient inspectors, nor the ability to immediately set standards, to protect workers from all hazards. The provision of exposure records will allow workers themselves, however, to protect themselves more completely than ever before. (ACTWU, Ex. 2(201), p. 5)

Based on the extensive worker testimony, the Steelworkers stated that: "In summary, the employees who testified do not pretend to be industrial hygienists or physicians, but they have demonstrated the ability to deal with technical material and seek help when needed;" and that "most unions have safety and health departments and consultants to provide advice in these areas" (Ex. 160, pp. 8–9) (*See also,* USWA, Ex. 160, pp. 2–4; Spatz (Cement, Lime and Gypsum Workers), Tr. 1200–01; Annas, Ex. 56, p. 7; Dr. Wegman, Ex. 10B (article on project to train industrial workers in health hazards surveillance); AFL–CIO, Ex. 152, p. 51). OSHA is convinced that workers and their representatives can and will obtain medical and exposure records and use this information to detect and help control occupational health hazards.

D. Improved Ability to Diagnose and Treat Occupational Disease

Direct access to exposure and medical data will also better enable an employee's personal physician to diagnose, treat, and possibly prevent permanent health impairment. Private physicians are extremely important to the proper diagnosis and treatment of occupational disease since there are currently very few trained and experienced occupational physicians (*See,* Dr. Wegman, Tr. 215–18). Dr. Teitelbaum discussed the importance of medical and exposure records in this context:

Day-to-day problems are raised for me as a practicing occupational toxicologist by the present situation in which employee medical records are not available for my study, are incomplete, or are submitted in a format which is obscure. My practice includes consultation in occupational health and toxicology. . . .

Some patients are self-referred and some are referred to me through their own primary physicians. These patients often consult their family practitioners, who are puzzled by the disease syndrome which they see but do not recognize. The practitioner carries out a traditional medical work up and detects abnormalities but does not have the knowledge required to arrive at a definitive diagnosis [which] links the disease to the individual's occupational activity, although he may strongly suspect an occupational connection . . . .

Typically, the information available to me is a classical medical record obtained from some other medical practitioner at the patient's request, a history which is obtained from the patient, and a small amount of information on the materials with which the patient has worked, which may be given graciously or grudgingly by the employer. Some employers collect and maintain important medical information regarding individual employees from preemployment examinations and regular medical monitoring. . . .

Some companies, even large employers, may have relatively little information on many of the chemicals which come into their plant, although they may have substantial information about the processes with which they work. Often, however, these companies are reluctant or resistant to provide copies of this information to the patient because of the medical-legal implications from a worker's compensation point of view. When such information is not provided to a consultant, diagnostic difficulties often occur. Patients usually do not know the health effects, the level of their exposure, or the chemistry of the material itself. They are usually unable to provide to me enough information for development of a definitive diagnostic and treatment program. (Dr. Teitelbaum, Tr. 114–116)

Dr. Wegman also stated the importance of exposure data to an examining physician faced with a patient experiencing a disease of unknown etiology (Ex. 10, pp. 7–8; Tr. 224; *See,* Dr. Parkinson, Ex. 43, p. 5; Samuels (AFL–CIO IUD), Tr. 972–73).

Physician access to medical and exposure data will help facilitate a prompt and accurate diagnosis, thus enabling appropriate treatment. Because the human body can react to various insults in only a limited number of ways, it is often difficult to distinguish between occupationally and non-occupationally related problems (*See,* VII.C.6, *infra*). Exposure and medical information can substantially assist a physician's evaluation, such as where previously recorded baseline medical information can be compared to current health status to ascertain whether and

how health has declined over time (*See*, Dr. Swartz, Tr. 2363, 2369–70). Access, by increasing the likelihood of discovering a connection between occupational exposure and a disease, will also enable a physician, where appropriate, to recommend a temporary or permanent end to exposure to the agent in question. Timely removal from exposure in some cases will serve to prevent the early manifestation of a disease process from progressing to permanent and irreversible health impairment. Timely removal from exposure in other cases will prevent further aggravation of whatever permanent impairment has already occurred. At the same time, a prompt diagnosis of an occupational disease can also serve to alert an employer of the need to reduce the exposures of other workers.

E. Employee Awareness and Improved Work Practices

Where the dangers of exposure to a toxic substance or harmful physical agent are known, worker access to information will also serve to decrease the incidence of occupational health problems. An individual worker's personal actions can greatly affect the extent of exposure to a toxic substance. These personal actions will be shaped by a worker's knowledge and appreciation of the health hazards he or she faces. Grover Wrenn, OSHA's official spokesperson at the public hearings, discussed this factor in his opening statement:

> Increased awareness of workplace hazards on the part of employees will also make it more likely that prescribed safety and health practices will be followed. During OSHA's hearings for the dibromochloropropane standard, one worker testified to the following, and I quote:
>
> We had no warning that DBCP exposure might cause sterility, testicular atrophy, and perhaps cancer. If we had known that these fumes could possibly cause the damage that we have found out it probably does cause, we would have worn equipment to protect ourselves. As it was, we didn't have enough knowledge to give us the proper respect for DBCP. Had we been warned of these dangers, some may not have accepted employment in the first place, and others, myself included, would certainly have handled this material more carefully.
>
> That is the end of that worker's quotation, but it is representative of comments delivered not only in that rulemaking hearing but others that OSHA has conducted on a number of toxic substances . . . . (Wrenn, Tr. 9–10)

Efforts are often made to control worker exposure to toxic agents through the use of respirators, protective work clothing, and careful personal hygiene (showers, washing hands and face before eating, etc.). Work practices which strive to minimize dispersal of toxic substances (e.g., immediately storing dust laden scrap material in closed containers) are also important. All of these control techniques depend on worker cooperation—cooperation which will best be assured when a worker knows the identity of hazardous substances he or she faces on the job, the magnitude of exposure, and the potential health consequences of this exposure (*See*, Dr. Wegman, Ex. 10, p. 7; Dawson (Electronics Safety and Health Project), Tr. 1600; Zebel, Ex. 2(91), p. 1).

F. Occupational Health Research

Access to exposure and medical records and analyses based on these records, as well as long term preservation of these records, will also facilitate formal occupational health research. Groups of employees and unions can use the access rights of this standard to make medical and exposure information available to university and private organization researchers (*See*, Dr. Enterline, Ex. 2(60)). Prof. Joel Swartz of the University of Illinois School of Public Health, Department of Occupational and Environmental Medicine, explained the importance of medical and exposure records to occupational health researchers:

> I think that the availability of medical records is important to detecting occupational disease and in being able to correct the situation which causes the disease. I want to bring out three main points. One, in the past, standards have been set too high for many substances, and the data from careful occupational and epidemiological study have been used to develop lower standards. In the same way, data from medical records and from monitoring could be used to provide information that standards for many other substances, the approximately 500 other regulated chemicals and many other unregulated chemicals, may be too high, and that therefore, the standard should be set lower.
>
> Second, the data from medical records is needed as a baseline to establish the presence of occupational disease because of individual variations in the population. In other words, many biological parameters vary from individual to individual, and a person may have substantial occupational disease, but this may be masked because of the normal variation in the population. And especially in the case of the working population, we generally find that the working population is healthier than the general population and that superficially it may look like there are no occupational diseases in the population, but if we have records that can show progressive changes, we may be able to find such occupational disease.
>
> A third point—it has been argued by industry that workers in their organizations and in some cases, NIOSH and OSHA, are not competent to interpret medical data. I'd like to argue exactly the opposite, that in many cases when data was left in the hands of industry, it has been systematically distorted and manipulated to mask the presence of occupational disease. And only when this data has gotten into the hands of representatives of unions or of NIOSH and OSHA has it been correctly interpreted and have we been able to find instances of occupational disease. (Tr. 2362–63).

Prof. Swartz gave a number of examples to illustrate these points (Tr. 2363–73). NIOSH also indicated that:

> Exposure, demographic and medical data provide valuable information in determining the effects of occupational exposures on workers, developing standards and establishing preventive measures. As has been shown in recent years, reliance on animal studies alone does not always provide the necessary information for evaluating or improving work or environmental conditions. . . . Since it would not be ethical to purposely expose humans to substances for research purposes, researchers must study those individuals who, as part of their everyday lives, may have been exposed to toxic substances. Specifically, information is needed to conduct various types of epidemiologic investigations, such as cross-sectional medical and reproductive studies, retrospective cohort mortality and morbidity studies and case control studies. The data needed for these studies include exposure data, medical information, work history information, and demographic data collected by employers. (Ex. 16, p. 2).

(*See also*, Weiner, Tr. 181–82; Dr. Wegman, Ex. 10A; NCCHR, Ex. 58, pp. 33–40, 46; Spatz (Cement, Lime and Gypsum Workers), Tr. 1205–06).

Although NIOSH and other federal agencies are likely to conduct a large portion of the non-employer-sponsored occupational health research in this country, there is a definite role for individuals such as union-sponsored researchers, university scientists, and doctoral candidates in occupational health or biostatistics. The designated representative provisions of the final standard will facilitate this kind of research.

G. Importance of Access To Explicit Statutory Rights

In addition, it is important to observe that worker access to exposure and medical information is important to the effectiveness of at least six explicit employee rights established by the Occupational Safety and Health Act. These statutory rights are discussed in greater detail in the Legal Authority portion of the preamble (V.A, *infra*). They are mentioned here because it is the agency's judgment that substantial occupational health benefits will result from improving the ability of workers to

make beneficial use of these statutory rights.

Access to information is first of all crucial to the effectiveness of the section 8(f)(1) right of employees and their representatives (29 U.S.C. 657(f)(1)) to complain to OSHA concerning perceived safety and health problems and obtain a prompt inspection of the worksite at issue. Access gives meaning to the section 8(e) right of employees and their representatives to accompany OSHA during plant inspections (29 U.S.C. 657(e)) in order to identify where and how various toxic substances are used, which plant operations generate the greatest exposures, and otherwise help OSHA conduct a thorough inspection. Access will enable workers to better exercise their twin rights under section 10(c) to contest the reasonableness of abatement periods proposed by OSHA, and to participate as parties in Occupational Safety and Health Review Commission adjudicatory proceedings (29 U.S.C. 659(c)). A fifth statutory right enhanced by worker access to records is the section 20(a)(6) right of workers to request a workplace Health Hazard Evaluation (HHE) by NIOSH (29 U.S.C. 669(a)(6)). Lastly, the knowledge learned by workers due to access to medical and exposure records will also heighten the impact of the employee training and education programs currently being funded by OSHA pursuant to section 21(c) of the Act (29 U.S.C. 670(c)).

By promoting the effective use of the foregoing employee rights, the final standard will substantially advance the statutory scheme created by Congress for the solution of occupational health problems.

H. Lack of Worker Access to Existing Medical and Exposure Records

Having discussed the benefits of direct worker access to medical and exposure records, it is appropriate to consider the kinds of records that employers generate, and the current practices concerning employee access to these records. As will be seen, the presence of records and the existing general lack of direct access establish the necessity for this standard.

Medical records relevant to potential occupational disease are generated in a variety of contexts. Occupational medicine is practiced in a wide variety of settings and encompasses a wide range of medical services. The range of experience includes company-owned hospitals capable of performing most primary care (Skiba (Magma Copper), Tr. 1446–8), sophisticated in-house medical departments with epidemiological, toxicological, and medical expertise (DuPont, Ex. 12, pp. 2–3), medical programs consisting only of an on-site occupational health nurse (Garry (Cal. Occ. Health Nurses), Tr. 1727), and contractual arrangements with industrial health clinics or outside physicians (either on a retainer or fee-for-service basis) (Dr. Jacknow (Chamber of Commerce), Tr. 981). Contractual arrangements with outside physicians or clinics constitute the major organizational form of occupational medicine practiced in this country (Dr. Wegman, Tr. 216–17; Dr. Jacknow (Chamber of Commerce). Tr. 981; Garry (Cal. Occ. Health Nurses), Tr. 1727; Dr. Hockwald (AOMA), Tr. 1531). There are approximately 10–15,000 physicians who are engaged in the practice of occupational medicine and many of these physicians practice only on a part-time basis. Approximately 500 of these physicians are board certified in occupational medicine (Dr. McLean (AOMA), Tr. 1536–7).

NIOSH, in its National Occupational Hazards (NOH) Survey found that only four percent of all industrial plants have a formally established health unit, only half of which were headed by a physician. The larger plants (500 or more employees) tend to have in-house medical facilities, accounting for 80% of the employees in plants which have a formal unit. The survey also found that whether a plant had and established health unit varied significantly according to industry type (Ex. 107; *See also,* Cal. Health Action Coalition, Ex. 95).

The NIOSH NOH Survey found a high degree of variation in the medical services provided by employers. Survey results indicated that 48% of all employees are given pre-placement physical examinations and 78% of all employees work in plants which regularly record some health information about new employees (Ex. 107; *See also,* Samuels (AFL–CIO IUD), Tr. 949). Some form of periodic medical examinations are provided to 34% of all industrial workers (Ex. 171, Table 11). Medical services provided by employers may include first aid, periodic comprehensive examinations, on-site treatment of injuries and illnesses, medical screening for occupational illnesses, medical examinations for workers' compensation and group health insurance purposes, and medical surveillance to comply with mandated OSHA requirements (NCCHR, Ex. 58, p. 30). As a result, and employee medical record can contain information concerning a variety of items: (a) a pre-employment questionnaire and/or medical history, with or without a physical examination; (b) laboratory tests; (c) chronology or episodic visits; (d) scheduled periodic examinations; (e) notes or letters from the employee's treating physician; (f) summaries of hospital records, other outside treatment records or consultations; (g) substance abuse problems; (h) psychiatric problems; (i) non-occupational medical problems; and (j) family records. (Dr. Whorton, Tr. 257).

The NIOSH NOH Survey also determined the extent to which employers regularly monitor the environmental conditions in their plants and receive some form of industrial hygiene services. In general, less than 5% of employers with fewer than 250 employees regularly perform monitoring (Ex. 171, Table 27). Approximately 16% of medium size manufacturing employers (250–500 employees), and 51% of large manufacturing employers (over 500 employees) regularly conduct monitoring *(Id.).* Overall, approximately 22% of all industrial employees are employed in plants where monitoring is regularly performed, with the percentage being approximately 40% for all manufacturing employees *(Id.).* The NIOSH NOH Survey shows a wide fluctuation in the extent of regular monitoring, depending on employer size and SIC code. In addition, it is to be expected that far greater percentages of employees are covered by infrequent monitoring than by regular exposure monitoring. For example, 52% of manufacturing industry employees work in plants which receive industrial hygiene services (Ex. 171, Table 2). Irrespective of the exact percentages involved, it is clear that a substantial portion of American workers work on jobs for which exposure monitoring is being conducted.

Industrial recordkeeping practices appear to vary widely as to the extent to which employees are provided direct access to medical and exposure records. Many occupational physicians subscribe to the "Code of Ethical Conduct for Physicians Providing Occupational Medical Services" adopted in 1976 by the American Occupational Medical Association (AOMA) (Tr. 1538; Ex. 2(59)). While members of the AOMA may be penalized for violations of the AOMA Code, including censure, suspension, or expulsion from the organization (Dr. McLean (AOMA), Tr. 1541), to date, no member physician has been disciplined for violating any part of the Code (Dr. McLean (AOMA), Tr. 1543). Moreover, one personnel manager, not himself a physician but nevertheless responsible for a large medical program, testified that he had

never heard of the AOMA or its code of conduct (Skiba (Magma Copper), Tr. 1501). In addition to the AOMA, the American Academy of Occupational Medicine (AAOM) (Ex. 2(101)), the American Medical Association (AMA) (Ex. 105), and the American Association of Occupational Health Nurses (Ex. 123) have similar codes of ethical conduct, and have similar sanctioning powers (Dr. Steen (AMA), Tr. 2398). License revocation by the state is also a potential penalty for ethical misconduct (Dr. Steen (AMA), Tr. 2398–99; API, Ex. 158, p. 19).

As part of its ethical code, the AOMA prescribes conduct with respect to informing workers about their health. It obligates occupational physicians to "communicate information about health hazards in timely and effective fashion to individuals or groups potentially affected" and to "communicate understandably to those they serve any significant observations about their health, recommending further study, counsel or treatment when indicated" (Ex. 2(59), Standards 8 and 9; *See also,* Council on Occupational Health, American Medical Association, *Scope, Objectives, and Functions of Occupational Health Programs* (1971), Ex. 93C, p. 8).

By its terms, this policy does not grant employees rights of full access to medical records. The rulemaking record indicates that in practice the AOMA policy has been subject to divergent interpretations, ranging from routinely giving employees copies of all documents generated in medical examinations (Dr. Dietz (Goodrich), Tr. 1221) to providing only an oral consultation if information is requested (Dr. Johnson (Goodyear), Tr. 1219–20). In general, occupational physicians familiar with industry practice depicted a broad middle ground in which "the occupational physician has an obligation to discuss in detail the results of his physical examination, laboratory studies and exposure data with the employee-patient" and "to provide factual information" (API, Ex. 68, p. 1). At the same time, they indicate that the occupational physician often retains broad discretion "as to how to release the information, and is required to divulge only information which is in the patient's best interest" (API, Ex. 158, p. 26 (footnotes omitted)). According to the AOMA,

> [U]sual occupational medical practice is to disclose an employee's records to him or her upon request. The physician, however, should be granted the right to withhold information contained in the record which may be harmful if divulged to the employee. An employee's designated physician should have the right, however, to review all medical information contained in the record. (Dr. McLean, Tr. 1530.)

In contrast, employees and their union representatives universally testified that lack of worker access to medical and exposure information was the rule rather than the exception. Numerous specific examples of employer refusals of information were given by employees, union officials, and independent physicians (Dr. Teitelbaum, Tr. 116, 118; Dr. Wegman, Tr. 231–34; Dr. Parkinson (USWA), Ex. 43, p. 5, Tr. 1145; Dr. Silverstein (UAW), Ex. 63, pp. 3, 4, 12–13, Dr. Ziem, Ex. 2(69), p. 2; AFL–CIO, Ex. 152, pp. 2–7, 9–11, 30, Ex. 39, p. 1, Tr. 640–42; Laden (USWA), Tr. 666–68; Wilson (USWA), Tr. 674–78, 683–84, 687; Wright (USWA), Tr. 871–72, 874–75; Becker (USWA), Tr. 2380–86; USWA Panels, Tr. 1116–24, 1150–52, 1157–61; Wodka (OCAW), Ex. 2(124), pp. 1–2, Attach., Ex. 26, Ex. 26a, Tr. 694–98; Eller (ICWU), Tr. 727–32, 745–46; Meyer (OCAW), Tr. 787–90; Clanigan (PHILAPOSH), Tr. 791–95; Walker (PHILAPOSH), Tr. 799–802; Frumin (ACTWU), Tr. 826–28; Keel (ACTWU), Tr. 843–48; Simonski (UAW), Tr. 1294; Klein (UAW), Tr. 1291–93; Mattillion (UAW), Tr. 1313–17; McDougall (IBT), Tr. 922–23; Howe (CACOSH), Tr. 1096, 1104–05; Spatz (Cement, Lime and Gypsum Workers), Tr. 1204–05; Electronics Safety and Health Project Panel, Tr. 1584–1605; LOHP Panel, Tr. 1679–83, 1685–90; HRG, Ex. 161, pp. 3–4; Ex. 161d, pp. 4–8; *See also,* Weiner, Ex. 9A, pp. 3–4, 13–14, Tr. 175–76; Castleman, Ex. 104; ACTWU, Ex. 2(201), pp. 1–3). The following passages are typical of the extensive worker testimony on this issue:

> The classic case that we are developing now concerns asbestos. It concerns bricklayers. Bricklayers in the steel mill, not the classic type of bricklayers that you are familiar with, but they reline furnaces and part of the substances that they use in relining furnaces are silicones and asbestos. When they tear them out, they are subject to heavy doses of very fine particles of asbestos. So asbestos has been recognized as a problem substance for a long time—not necessarily always connected with cancer but sometimes with asbestosis.
>
> So in 1952, the company agreed to examine the workers exposed to asbestos on a yearly or an every 18-month basis, and so from 1952 until today they have been doing that. But all that time—I have to give you a little background on the company dispensary. It is a very well-equipped dispensary. They have 16 medical doctors on staff, so they know what they are doing.
>
> Now, all the time from 1952 to date, they have not [found] a case of occupational illness among the bricklayers. Just six months ago we took a list of the bricklayers that were off sick and out of the 15 that were off sick, seven of them had over 30 years seniority, which is significant because of the latency period of asbestos in relation to problems. Out of the seven, four of them had a lung removed or a part of a lung removed. Two of them had congestive lung disease, and all of them had been examined by the company dispensary not less than seven months prior to the last time that they worked. All of them had been told by the company that you have no problem, with the exception of one, who was told by the company that 'Your pulmonary function tests have been getting worse for the last five years, and we think it is time that you saw a doctor.' None of them have been told by the company that 'We think you ought to get out of the area. Your pulmonary function tests are showing up worse. For your own benefit, get out of the area, stop getting exposed to the silicones and the asbestos.'
>
> Now you ask yourself why that would be the case and the answer is kind of obvious to the workers, anyway, that if the companies examine an employee for exposure to a specific agent that is harmful to his health, and then they admit that his health has been damaged and move him to another area, they are immediately subjected to a Workman's Compensation Claim, which is an expense item. That is because employers—specifically now, we are talking about Bethlehem Steel—refuse, blatantly refuse, to give employees any information in spite of the fact, in the case of the bricklayers, . . ., we have a document signed by the employee designating his personal physician, signed by a witness, requesting his records to be sent to his own doctor. The company has refused to supply those records to the doctors. (Wilson (USWA), Tr. 676–78)
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> * * * * *
>
> The union has also had difficulty receiving medical data. In these cases, despite a medical testing program which yields critical information the union is prevented from receiving the data. Workers at one ICWU local in New Jersey have been requesting but not receiving relevant work-related exposure records in a plant with an extremely high incidence of lung and bladder abnormalities. Another local demanded that sputum cytology results be forwarded to a doctor of the worker's choice. Workers were forced to picket and work without a contract for several months over this issue. In Waukegan, Illinois the ICWU was unable to obtain the results of [X-ray tests] and had to request that OSHA obtain these records. (Eller (ICWU), Tr. 731–32)
>
> * * * * *
>
> I personally wrote a letter to the head of the Employees Relations Department of our plant site and one to the doctor requesting my complete medical file. I had a problem a few years back with acute bronchitis. I was working in an area called the aflare area. . . .
>
> What it is for are these pearl cosmetics, some of the eye shadow that the ladies wear, but it is made with a really super fine mica. I worked in that area for almost nine years and I had continuous bronchitis all the time. It was acute. I finally got out of the area, and two years later my bronchitis started to clear up, but I wanted my medical records to see

for what reason I had this acute bronchitis all the time.

I got a letter back from the Employees Relations Department that said that medical records were confidential, the personal property of the company, and I was not allowed to have them. I could come down to the Employees Relations Department with my immediate supervisor and look over my medical records. I didn't get any of the medical records at all. The only way I ever got medical records through the DuPont Company is through an arbitration case and the medical records had to be subpoenaed. (Walker (PHILAPOSH), Tr. 799–800)

* * * * *

For example, in the welding areas we have periodically in the past requested tests be performed in the area where heavy concentrations of welding operations are performed. Specifically, . . . for exposure to such things as ozone or iron oxide. After the tests were made, after approximately three months for a team of hygienists to come from Detroit, we were told that all areas checked were in compliance. Exact results of the tests, however, were never disclosed to me. Nor were they disclosed to the particular employees who were tested. By simply stating that the test showed the corporation in compliance, in my opinion, does not mean the operation is healthful or particularly safe. Their results, for example, could have been on the high end of permissible exposure limits, making them far more harmful than had they been on the low end. Without this precise data our local safety committee is at a loss as to what to demand in the way of personal protective equipment or proper ventilation or whatever the case may be. Results of pulmonary function tests performed on these individuals and administered to many other employees have not as yet been disclosed to me or the employees despite repeated requests.

Another example is in the area of noise. We have known for a long time that many areas of the plant were out of compliance inasmuch as noise was concerned. As a result of an OSHA inspection and subsequent citation, the corporation instituted a large-scale noise survey in the plant. This survey was started approximately one and a half years ago and was completed in April of this year. Again, when we asked for exact results of the survey, we were told that most areas were in compliance but there were some definite problem areas. However, it was becoming [clear] to us that a serious problem was developing in certain areas of the shop with regard to possible noise-induced hearing loss. When the employees in these high noise areas requested copies of their audiograms that were being administered to them and were denied these copies, they became concerned because the simple fact was that they were having trouble hearing. This prompted the local union to set up at the union hall an audiologist to give preliminary hearing tests to anyone who wanted them.

As a result of this preliminary hearing testing and subsequent testing, approximately 500 employees were found to have noise-induced hearing loss of one degree or another. Five hundred cases, the severity of some which may have been lessened had the employees had access to their records and took necessary measures sooner. (Mattillion (UAW), Tr. 1313–14)

* * * * *

On the other hand, workers are often forced to turn to the grievance procedure, including arbitration and strike action, to obtain vital medical or exposure data. I personally have been involved in numerous occasions where we have or I have assisted through our union or myself directly in such endeavors . . . [G]oing back four years ago in Borg Warner Mechanics Division in Rockford, where we had a worker who had already been diagnosed as overexposed to maganese, the consequences of which I am sure the medical professional can articulate much better than I, but certainly it can destroy the central nervous system and do great damage to the individual if the amounts are excessive enough. He had already been diagnosed. We had to go to grievance procedure, we had to go to arbitration on contract language, and we had to take the initial steps of strike action to finally get the medical information and data that was in those records all the time. And it took us over two years of maneuvering and delay and frustration on the part of this individual to achieve that. And the only thing that is uncommon about that is the length of time. It is more common than not to have to resort to these kind of tactics and pressures to obtain medical information and data on these individuals. (Klein (UAW), Tr. 1291–92)

Employee and union testimony also indicated that when some form of access to exposure or medical information is provided by management, this is often given orally with only a general indication that the employer is or is not in compliance with prescribed standards, or the employee does or does not have a problem. Precise quantitative results are not released to either the employee or the union. In the light of its experience the AFL–CIO concluded,

To date, gaining access to exposure and medical information has been an uphill battle. While some unions have negotiated and gained the right to exposure information, most have had to resort to grievances, arbitration, unfair labor practices [claims], and in some cases strikes to secure information necessary to represent and protect their membership. These procedures are long and costly but the record shows only when required by law or ordered by an arbitrator or the NLRB will many employers turn over the requested information. (Ex. 152, p. 9; citations omitted)

OSHA's considerable experience from other rulemaking and enforcement proceedings corroborates the testimony from workers and their unions that they are often denied access to basic data in exposure and medical records. The statements of facts in several recent judges' decisions in NLRB cases involving access to exposure and medical records also provide corroborating evidence that access to such information is not routinely given. *Colgate-Palmolive Co.*, Case No. 17–CA–8331, ——. NLRB —— (March 27, 1979); *Minnesota Mining and Manufacturing Co.*, Case Nos., 18–CA–5710–11, —— NLRB —— (March 13, 1979); *Borden Chemical, A Divison of Borden, Inc.*, Case No. 32–CA–551, —— NLRB —— (April 25, 1979). Moreover, industry witnesses, while maintaining that in their view employees are provided adequate exposure and medical information, emphasized that broad discretion is exercised by management or the corporate physician over the manner and extent of disclosure.

OSHA concludes on the basis of the record and its own experience that denial of direct, unrestricted access to exposure and medical information is commonplace, if not the universal practice of industry. In those plants where direct access is freely granted, this standard will not significantly alter current practice. This standard is, however, necessary in those many situations where access is routinely denied. By making vital exposure and medical information available to workers and their representatives as a matter of a legally enforceable right, this standard will directly and indirectly contribute substantially to the detection, treatment, and prevention of occupational disease.

I. Designated Representative Access to Records

In order to enable each worker to utilize his or her rights of access to records, the final standard permits an employee to designate representatives to exercise access rights. OSHA believes that enabling an employee to designate anybody he or she desires to entrust with access rights will most effectively achieve the purposes of the Act and this standard. The employee should ultimately be the judge of who can make a positive contribution to his or her well-being by access to records. As a result, no limitation is placed on who the employee may choose to act as a designated representative (*See*, Weiner, Ex. 9A, pp. 36–40; Dr. Silvertein (UAW), Ex. 63, pp. 7, 10; Dr. Parkinson, Ex. 43, p. 4; Annas, Ex. 56, Tr. 1748–49, 1751–52; AFL-CIO, Ex. 152, pp. 51–3, 55–6; USWA, Ex. 160, pp. 10, 20; Wodka (OCAW), Tr. 701–02).

Provisions in the final standard concerning designated representative access serve to facilitate the manner in which employees will often exercise access rights in practice. Workers in various situations will inevitably desire that their records be reviewed by private physicians, union officials and technical staff, family members,

attorneys, or others. Designated representative access simply enables workers to avoid having to personally obtain information which they will then provide to a third party; rather, the desired third party can get direct access with worker consent. Many labor unions, in particular, have become increasingly active in occupational safety and health matters (Ex. 172), and have either employed or developed professional relationships with physicians, industrial hygienists, epidemiologists, and toxicologists. OSHA is accelerating this trend through its "New Directions Grants Program" (Ex. 173). Designated representative access will facilitate union access for health and safety purposes, as well as access by professionals serving the occupational health needs of non-union workers. (*See*, Electronics Safety and Health Project, Tr. 1585).

Experience under the National Labor Relations Act is also relevant to the role of unions as designated representatives of employees. That Act gives collective bargaining representatives statutory rights to information relevant or necessary to the collective bargaining process or to their responsibilities under a collective bargaining agreement. This may include access to exposure and medical records. In *Detroit Edison Co.* v. *NLRB*, 440 U.S. 301 (1979), the Supreme Court recently stated that the interests of the employer in the manner and extent of disclosure must be balanced against the interest of the union. The Court held that the employer in that case had not breached its duty to bargain in good faith when it refused to release personally identifiable scores of psychological tests without the employees' consent. With employee consent, however, the union would have been entitled to that data.

In other contexts, the courts have generally rejected claims of confidentiality as a basis for withholding relevant information from the union. See *General Electric Co.* v. *NLRB*, 466 F.2d 1177 (6th Cir. 1972) (wage data); *NLRB* v. *Frontier Homes Corp.*, 371 F.2d 974 (8th Cir. 1967) (selling price lists); *Curtiss-Wright Corp.* v. *NLRB*, 347 F.2d 61 (3rd Cir. 1965) (job evaluation and wage data); *NLRB* v. *Item Co.*, 220 F.2d 956 (5th Cir. 1955), cert. denied, 350 U.S. 836 (1955), 352 U.S. 917 (1956) (wage data); cf. *United Aircraft Corp.*, 192 N.L.R.B. 382, 390 (1971) (company physician's records not discloseable without employee's permission unless needed for a particular grievance), modified on other issues sub nom. *Lodges 743 and 1746* v. *United Aircraft Corp.*, 534 F.2d 422 (2nd Cir. 1975), cert. denied, 429 U.S. 825 (1976); *Shell Oil Co.* v. *NLRB*, 457 F.2d 615, 619 (9th Cir. 1975) (refusal to furnish employees' names without consent was proper when it was "establish(ed) beyond cavil that there was a clear and present danger of harassment and violence"). Cf. *Detroit Edison Co.* v. *NLRB*, 440 U.S. 301 (1979) (dissent). A number of arbitration decisions have also been reported resulting in access to exposure or medical information by grieving employees or their representatives (e.g. Ex. 2 (124); Ex. 122).

J. OSHA Access to Exposure and Medical Records

The final standard reaffirms OSHA's right of access to employee exposure and medical records. OSHA is a public health agency with regulatory responsibility "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions . . ." (Section 2(b) of the Act, 29 U.S.C. 651). Access to employee exposure and medical records is necessary to accomplish numerous statutory responsibilities, and all comprehensive occupational health standards promulgated under the Act to date have included provisions requiring OSHA access to exposure and medical records (*See*, 29 CFR 1910.1001–.1046).

Employee exposure records are crucial to the performance of many of the agency's investigatory, enforcement, and other regulatory functions. Compliance personnel routinely review employer-generated exposure records. Air monitoring data can pinpoint the problem areas within a plant and enable OSHA industrial hygienists to focus their investigatory energies on these problems. All OSHA health standards are structured in a fashion such that many employer obligations are tied to the results of initial exposure monitoring. For example, under OSHA's inorganic lead standard, an employer need only provide complete medical surveillance to employees "who are or may be exposed above the action level (30 micrograms of lead per cubic meter of air) for more than 30 days per year" (29 CFR 1910.1025(j)(1)(i)). Exposure records are thus scrutinized to verify that an employer has properly complied with its responsibilities. Exposure records are also routinely used in rulemaking proceedings for such purposes as defining the universe of employees at risk and analyzing the extent to which current technology has achieved a desired level of protection (Wrenn, Tr. 51–52).

Employee medical records are less frequently used by OSHA than employee exposure records, but are equally important to the agency's performance of its statutory functions. Prior to this rulemaking, the agency had no written instructions to its personnel on the use of employee medical records. Medical records have been only sporadically sought and used depending on the circumstances of particular compliance cases, and the expertise of the agency personnel involved. In recent years the national office has acquired full time staff physicians, and some OSHA field offices have established relationships with private physicians who are available when needed in specific cases. The agency's use of employee medical records will likely increase in the future with expanding medical resources and expertise, and with the development of additional comprehensive health standards. It is appropriate to outline some of the specific situations in which employee medical records have been or could be relevant to OSHA statutory functions:

1. All comprehensive OSHA health standards contain medical surveillance programs and associated recordkeeping requirements. Access to required employee medical records is necessary to verify employer compliance (AFL–CIO, Ex. 152, pp. 58–59). Field personnel might, for example, check a sample of records to verify that required biological monitoring tests were performed and results recorded, and that written medical opinions are preserved. In these situations, no substantive review is made of the medical content of required records.

2. OSHA enforces Section 11(c) of the Act (29 U.S.C. 660(c)) which prohibits employment discrimination against any employee for the exercise of rights afforded by the Act; e.g., the right to complain of unsafe working conditions. There have been cases where an employer has altered a worker's job status for purported medical reasons, and the worker then complained to OSHA that this action resulted from a retaliatory or other discriminatory intent. To investigate these situations it is necessary to obtain all relevant employee medical records to ascertain the legitimacy of the employer's actions. A summary of three recent cases of this nature has been added to the record (Ex. 174).

3. The substantive content of employee medical records may at times be relevant to the type of enforcement action OSHA initiates against an employer, or to proof of the appropriateness of an enforcement action. Serious violations under Section 17(k) of the Act (29 U.S.C. 666(j)) require an element of actual or constructive

employer knowledge. Section 17(k) provides:

> For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

This "knowledge" element may be satisfied by a variety of forms of proof (*See,* Rothstein, Safety and Health Law, ss76–79(1978)). The content of employee medical records could document a pattern of disease sufficient to give an employer actual knowledge of the hazard involved (Wrenn, Tr. 61; Frumin (ACTWU), Tr. 851–2; USWA, Ex. 160, pp. 24–25).

4. The question of whether or not an employer willfully violated an OSHA standard may also be influenced by the content of employee medical records. Willful violations under Section 17(a) of the Act (29 U.S.C. 666(a)) carry up to a $10,000 penalty as opposed to potential $1,000 penalties for serious or non-serious violations (sections 17 (b) & (c), 29 U.S.C. 666 (b) & (c)). Willful violations may involve evidence of an employer's knowledge of both the requirements of an OSHA regulation and the factual circumstances underlying the hazardous working condition. This latter element may be satisfied by a pattern of disease related to occupational exposure to a toxic substance which is documented by employee medical records (USWA, Ex. 160, pp. 24–25).

5. In narrow situations, employee medical records could similarly influence whether or not a "general duty clause" violation occurred. Section 5(a)(1) of the Act (29 U.S.C. 654(a)(1)) provides that each employer:

> [S]hall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

In addition to the knowledge element being traced either to industry or common sense recognition of a hazard, the "recognized hazard" element of this general duty clause can be proved by actual employer knowledge of a hazard (*Brennan v. OSHRC (Vy Lactos Laboratories, Inc.),* 494 F.2d 460 (8th Cir. 1974); *See,* Rothstein, Health and Safety Law, s124(1978)). Again, employee medical records could document a pattern of disease constituting actual knowledge of a hazardous working condition (AFL–CIO, Ex. 152, pp. 58–9; USWA, Ex. 160, pp. 24–25).

6. In some situations a medical practice itself constitutes a violation of an OSHA standard. OSHA's lead standard prohibits prophylactic chelation, a medical procedure involving periodic use of a drug having serious side effects to extract lead from a worker's blood stream (29 CFR 1910.1025(j)(4), *See* 43 FR 53001–004 (Nov. 14, 1978)). Employee medical records could help document instances where this unlawful medical procedure was used (Wrenn, Ex. 7, p. 20).

7. Employee medical records are also relevant to the rulemaking process whereby OSHA health standards are established (Wrenn, Tr. 58). Human epidemiological studies are often at the heart of rulemaking medical controversies, and employers often present studies concerning the disease experience of their employees. Although the agency has not generally attempted to analyze independently the raw data for these studies, such analyses may well be performed in the future to better assess the significance of employer-generated studies (*See,* NCCHR, Ex. 58, p. 35). Also, OSHA intends to assess periodically the adequacy of its health standards. This could involve analysis of medical records of employees consistently exposed at or below the permissible exposure limit (*See,* Schwartz, Tr. 2362–63).

8. Employer medical records could be highly relevant to imminent danger situations. Medical records could demonstrate that a particular worker (or group of workers), in light of the worker's current health status, faces an imminent danger of disease or death from present working conditions. For example, presence of a toxic chemical in the worker's body may be close to a threshold for disease, and current workplace exposures are such that the threshold will soon be exceeded. Section 13(a) of the Act (29 U.S.C. 662(a)) and agency procedures provide for formal imminent danger proceedings (29 CFR 1910.13; Ex. 113, Field Operations Manual, Chpt. IX), and the content of employee medical records could precipitate initiation of these procedures.

9. Employee medical records can be relevant in situations where concern arises over the etiology of a newly discovered pattern of disease (AFL–CIO, Ex, 152, pp. 58–9). In these potential emergency situations a team of OSHA experts (sometimes in concert with NIOSH) can often act in close cooperation with an employer to investigate all possible causes of the disease. Immediate corrective action would then be taken if necessary to protect currently exposed employees. Medical records can be crucial sources of information in these situations. The result of these emergency investigations can be a variety of regulatory and non-regulatory responses. Examples include voluntary employer action which ends the need for governmental action, a formal OSHA/NIOSH Health Hazard Alert to all employers using a toxic chemical, or the initiation of Emergency Temporary Standard proceedings pursuant to Section 6(c) of the Act (29 U.S.C. 655(c)).

10. Employee medical records can be relevant to compliance investigations of the efficacy of controls on worker exposure to toxic chemicals. For example, the efficacy of a respirator program can be assessed by its success in preventing undesirable changes in employee biochemical status such as blood lead level elevations. Medical record proof could buttress citations based on the inadequacies of a respiratory program.

11. Access to employee medical records
is also necessary in very limited situations where an employer conducts medical surveillance, but fails to either evaluate the medical data, take corrective action vis-a-vis employees when disease arises, or even inform employees of diagnoses of disease. In these cases, agency physicians could independently evaluate the substantive content of the medical records in order to direct these problems.

The preceding paragraphs discuss some of the many situations where employee exposure and medical records can be extremely relevant, and sometimes crucial, to the performance of OSHA's statutory functions. Section IV.G of the preamble, *infra,* discusses the most significant policy issue involved with OSHA access to these records, i.e., OSHA access to employee medical records and the common law and Constitutional right of privacy.

IV. Central Factual and Policy Issues Concerning Access to Records

A. Introduction

In promulgating this final standard, OSHA not only determined that broad worker and designated representative access to records would serve important occupational health purposes, but also carefully evaluated the various arguments which were raised for and against OSHA's proposed means for achieving these objectives. Workers, union representatives, and several physicians and experts endorsed the concepts of direct, unrestricted employee access to medical and

exposure records plus an employee's additional right to designate representatives to gain access to these records. Most employer participants, however, opposed these access principles on a variety of grounds. Concerns were voiced about potential harm to employees and the occupational physician-patient relationship should direct employee and designated representative access be provided to medical records. Similar concerns were raised as to OSHA access to employee medical records. Arguments were raised that this rule would impair the ability of employers to attract occupational physicians and otherwise conduct effective occupational medical programs. Employee and designated representative access to both medical and exposure records was opposed on the grounds that these records would often be misinterpreted and misunderstood. Unqualified access to exposure records was opposed due to the possibility of trade secret information being revealed to competitors.

OSHA carefully considered these arguments in light of the record, the agency's expertise and experience, and the legal and practical context in which this standard will operate. The proposed rule has been modified in a number of respects to assure that: (1) the direct release of medical records to an employee is accomplished in a professional manner which minimizes any potential for harm or misinterpretation; (2) access to medical records by a designated representative is the result of specific written employee consent rather than a blanket release; and (3) the potential for competitive harm resulting from an unauthorized release of trade secret information is minimized. Administrative regulations are also being issued simultaneously with this standard in order to govern OSHA's access to employee medical records. These modifications to the proposed rule partially meet concerns expressed during the rulemaking proceeding. In other respects, however, the agency has concluded that employer fears concerning the standard's consequences are ill-founded, and that the central access provisions of the final standard represent sound public policies which are fully supported by the record. The discussion which follows explores in detail the agency's decisions on these matters.

B. Arguments of Potential Harm to the Employee Due to Direct, Unrestricted Access to Personal Medical Records

The concept of direct and unrestricted employee/patient access to his or her medical record generated considerable controversy during the rulemaking proceeding. Arguments were made that direct access could prove to be genuinely harmful in certain cases; thus the employer's physician should retain discretion as to what information is released, and to whom. Statements were made that medical records may contain sensitive information, such as subjective notes or a listing of possible diagnoses which the physician should consider but about which he or she has no firm opinion (i.e., differential diagnoses), or diagnoses of psychiatric disorders or terminal illnesses. Some physicians expressed the fear that revelation of sensitive information to a possibly unstable employee may provoke severe anxiety or a worsening of the employee/patient's physical condition (Dr. Dixon (SOCMA), Tr. 525; Dr. McLean (AOMA), Tr. 1557–58; Jensen (EEI), Tr. 1781–82; Dr. Spraul (Monsanto), Tr. 1909–10; Dr. Joyner, (Shell), Tr. 2226–27, Ex. 2(61), pp. 1–2).

This statement by Dr. Dinman of ALCOA is representative:

> Where medical record entries represent written notes of physicians which are needed to adequately manage the health needs to a patient, prudent exercise of non-disclosure is occasionally in the best interest of the patient and the therapeutic relationship. For example, tentative suspicions of fatal conditions or emotional aberrations; tentative propositions that such might be the case are necessary for the record of the physician seeing many patients and who will see this patient some time in the future.
>
> In the future, these considerations, these differential diagnostic possibilities may prove either unproven or still open to consideration and not established at some future juncture. Disclosure of such working diagnoses is rarely in the patient's interest and can, indeed, create physical and emotional problems which are wholly unnecessary. (Ex. 15, p. 5)

Another example of information which some physicians testified they would hestiate to disclose to patients/employees is information provided confidentially by a third party, whose identity may be indicated in the record (e.g., spouse, fellow employee). In their opinion, disclosure of this information, which is often sensitive in nature (e.g., substance abuse or behavioral problems), would violate the informant's expectation of confidentiality and may possibly even provoke violence (United Technologies Corp., Ex. 2(6); NAM, Ex. 2(135), p. 10; AISI, Ex. 2(142), p. 16; DuPont, Ex. 2(148), pp. 29–30; Dr. Hockwald (AOMA), Tr. 1529–30, 1554, 1556; Dr. Reilly (EEI), Tr. 1769, 1772–3; Dr. Joyner (Shell), Tr. 2227; cf., Dr. Teitelbaum, Tr. 137–140).

While instances where direct access to medical information may cause harm are generally acknowledged by physicians expressing these concerns to be rare, they nevertheless consider them to be sufficient reason to deny providing patients/employees with absolute rights of access (Dr. Hockwald (AOMA), Tr. 1554; API, Ex. 158, p. 28).

These arguments concerning recorded information on tentative or differential disgnoses, terminal illnesses, psychological disorders, and information supplied by informants have been presented as reasons for retaining broad physician discretion over the disclosure of medical records. Those witnesses advocating reliance on professional judgment and discretion in the disclosure of medical information usually recommended that release be only to the employee's designated physician on the grounds that, unlike others, a physician has an ethical duty of confidentiality and is uniquely qualified to interpret medical data (New Jersey Dept., of Labor, Ex. 2(58), Attach. (Hercules Corp.); Sherwin-Williams Co., Ex. 2(76); Batchelor (MCA), Tr. 396–7, 403; Dr. Hine (ASARCO), Tr. 1619; Dr. Bernacki (NAM), Tr. 2189–90, Ex. 2(135), pp. 5–6, 9). Physician-to-physician transfer of medical records with the consent of the patient is recognized as an ethical obligation by the medical profession (AMA, *Principles of Medical Ethics* (Rule 5.61), Ex. 105, p. 27).

Based on the record and its own policy judgments, OSHA concluded that reliance on physician discretion to disclose information to an employee, or solely on physician-to-physician transfers of medical records, are inadequate responses to the needs for direct worker access. Unrestricted patient access to medical records has been a major public policy issue during the past decade, and the evolving trend throughout the nation has been to provide direct patient access to medical records. Professor George Annas, Associate Professor of Law and Medicine at Boston University School of Medicine, and a member of the Massachusetts Board of Registration and Discipline in Medicine (Ex. 56 at 1), testified at the hearings as to this trend:

> Access to hospital and private physician records has traditionally been governed by state law, and until the 1970's, few states provided for direct patient access, the vast majority requiring commencement of a legal proceeding before records could be made legally available. Currently, however, a significant number of states, including California, Colorado, Florida, Hawaii, Illinois, Indiana, Massachusetts, Minnesota, Nevada, New Jersey, Oklahoma, Oregon, and Virginia have statutes that provided direct patient

access to physician or hospital medical records. In addition, access is guaranteed by case law in other states, such as Illinois, Nebraska, New York and Texas. The general theory of the case law is that "the fiducial qualities of the physician-patient relationship require the disclosure of medical data to a patient or his agent on request . . . ;" and that patients have a right to access to their own records based on a "common law right of inspection."

State medical licensing boards are also beginning to take cognizance of the importance of patient access to medical records. New York in 1977 and Massachusetts in 1978 have required their licensees to make such records available to patients upon request. On the federal level, the Privacy Act of 1974 requires direct access under most circumstances, and the Privacy Protection Study Commission, set up under that act, has recommended that:

Upon request, an individual who is the subject of a medical record maintained by a medical-care provider, or another responsible person designated by the individual, be allowed access to that medical record including an opportunity to see and copy it (at p. 298 of their report).

This recommendation reinforces one made more than five years ago by HEW's Malpractice Commission which recommended that "states enact legislation enabling patients to obtain access to the information contained in their medical records through their legal representatives, public or private, without having to file a suit." (Ex. 56, pp. 2–3) (cases omitted)

In addition, California, Oregon, Maine, and Michigan have statutes giving employees access to personnel records, including medical records, used to make employment decisions (NCCHR, Ex. 125, p. 5).

The 1976 Privacy Protection Study Commission ("Privacy Commission") devoted a chapter of its final report to the many issues presented by recordkeeping practices in the medical-care setting (Ex. 101, Chpt. 7). The Commission fully reviewed the ramifications of direct patient access to medical records and recommended:

Upon request, an individual who is the subject of a medical record maintained by a medical-care provider, or another responsible person designated by the individual, be allowed access to that medical record including the opportunity to see and copy it. (Ex. 101, p. 98)

This basic right of patient/employee access to one's own medical records was also generally endorsed in the rulemaking proceeding by the National Commission on the Confidentiality of Health Records (NCCHR), a coalition of 23 health care organizations (Tr. 1867), and the American Medical Records Association (AMRA), a professional organization representing 22,000 members involved in medical records administration (Tr. 2456).

A variety of public policies support patient access to medical records, but the Privacy Commission based its recommendation on the fundamental personal privacy principle that an individual should have a "right of access to records about himself for the purposes of reviewing, copying, and correcting or amending them as necessary plus some control over the collection and disclosure of information about him" (Ex. 101, pp. 17–18). This fairness principle was explicitly extended by the Commission to medical records in general (Ex. 101, pp. 300–03), and to employer-maintained medical records in particular (Ex. 101, pp. 258–9). Moreover, in the Commission's opinion, the need for patient/employee access to medical records was inextricably tied to the patient/employee's need to authorize disclosure of his/her medical record in a variety of situations.

Indeed, in the final analysis, the most persuasive line of reasoning favoring access turned on the concept of authorization. So long as it is thought acceptable, or even necessary, for an individual's past or present medical condition to be taken into account in making non-medical decisions about him, he will be asked to allow others to have access to his medical records or at least some of the information in them. As a practical matter, however, his authorization allowing such access to a third party will be meaningless so long as he does not know, and cannot find out, what is in the records. Both theoretically and practically, authorization is a meaningless procedure unless the individual knows what he is authorizing to be disclosed. (Ex. 101, p. 289)

Although numerous organizations and individuals favor direct patient/employee access and oppose relying on physician discretion as to the release of medical records, there is recognition that disclosure to an intermediary, not necessarily a physician, may sometimes be appropriate. The Privacy Commission recommended that some provision should be made for indirect access to a designated person, provided it was clear that there would be no restriction on the ability of that person to disclose all the information to the patient (Ex. 101, pp. 259, 297–8).

* * * [N]o solution would be acceptable in the long run so long as it risks leaving the ultimate discretion to release or not to release in the hands of the patient's physician. In situations where the keeper of the medical record believes that allowing the patient to see and copy it may be injurious to the patient, the Commission concluded that it would be reasonable for the record to be given to a responsible person designated by the patient, with that person being the ultimate judge of whether the patient should have full access to it. In no case, however, should the physician or other keeper of the record be able to refuse to disclose the record to the designated responsible person, even where it is known in advance that the designated person will give the patient full access to it. (Ex. 101, pp. 297–98)

Several participants expressed general support for this approach, at least when highly sensitive information concerning psychiatric or terminal illness diagnoses were involved (Weiner, Ex. 9A, p. 35; Belair (NCCHR), Tr. 1867–71). Other participants, however, discounted the possibility that the direct release of even psychiatric or terminal illness information could prove harmful:

There is also, I think it worth noting, no evidence at all in the literature * * *, nor has there been any evidence brought forth in any hearings on this subject to indicate any negative impact at all of access to medical records on the part of individual patients.

We have heard that assertion made, and it is made commonly, that should patients get access or employees get access to their records this will have a detrimental effect on their medical condition, that they will become anxious, they will become upset, and they will become worse off. This is another way of arguing that this is opposed to the traditional doctor-patient relationship.

The fact of the matter is of course that—well not necessarily of course—but the fact of the matter is that there is no evidence to support this, and indeed all the evidence is on the other side, that since no one has ever been able to come up with any example where this has happened, one has to assume the opposite, that this hasn't happened and that in fact the studies on the other side which show that medical records in fact improve and not hinder the doctor-patient relationship, should be given more credence.

The Privacy Commission, for example, took testimony from all the Federal agencies about their experience under the Privacy Act since 1974 and not one agency could point to one case in which access to medical records had been detrimental to a patient. (Prof. Annas, Tr. 1745–46)

* * * * *

There is of course always the issue raised that there is a danger of misinterpretation and adverse emotional impact of the patient's reading his or her own medical record. Although I cannot promise that this would not happen, to my mind, the idea of frightening an individual by frankly informing them is absurd. An individual who does not wish to know that he has a terminal disease will choose not to know it. In fact, I would suggest the medical profession has more experience with individuals denying terminal disease even when informed about it than with having people adversely affected by chance discovery of terminal disease. In any event the individual should have the right to make that decision, not have some other third party make that decision for him or her. (Dr. Wegman, Ex. 10, p. 10)

* * * * *

Although there are numerous abbreviations, shortcuts, and jargon utilized in medical records, and, although physicians

frequently include early diagnostic opinions which are not substantiated by objective information, records are still readily capable of interpretation by a competent, intelligent physician to a concerned patient. Certainly failure to use the English language should not disqualify the patient from information about himself. (Dr. Teitelbaum, Ex. 8, p. 7)

* * * * *

OSHA regulations should certainly not exempt terminal illness from disclosure since there is evidence that diagnoses of occupational cancer have been completely withheld in the past and workers do not necessarily have their own physicians who would seek this information. (Laden (USWA), Tr. 668)

* * * * *

My personal custom has always been, while the patient's waiting, to give the patient their record. It keeps them busy when I fall behind, and it allows them to ask me questions about the things I've written there. And my instruction to my house staff and the attendants there at Cook County Hospital is that the patient should be given his record.

There's a very small marginal group of patients, so small as to not be important for our discussion, who cannot handle or might misunderstand serious diagnoses or phraseology. This is a bug bear as far as I'm concerned. It's not a serious issue. . . . But for the issue before us, working people, and a knowledge of what's going on in the world around them, I don't think [the problem of psychiatric diagnoses] has any relevance at all. (Dr. Young (CACOSH), Tr. 1107, 1109)

In addition, experience under the access provisions of the Privacy Act (5 U.S.C. 552a) is relevant. The Privacy Act governs access to medical records kept by the Federal government, and authorizes Federal agencies to develop special procedures which permit indirect access via a designated person when direct access would be considered harmful to the subject of the medical record (552a(f)(3)). Agency implementing procedures vary from providing indirect access through any responsible person designated by the patient (45 CFR 56.6) (HEW) to limiting access to a physician of the patient's choice (32 CFR 286a.7) (Defense). The Department of Labor took the more restrictive designated physician approach (29 CFR 70a.6(d)). In practice, however, most access under the Privacy Act throughout the government has been directly to the patient, and no harm from direct access has apparently ever occurred (Ex. 101, pp. 296–97). In the words of the Privacy Commission:

The Commission's hearings failed to produce evidence that one procedure was more effective than another in protecting patients from any adverse consequences that might result from obtaining their medical records. Not one witness was able to identify an instance where access to records has had an untoward effect on a patient's medical condition. While the Department of Defense special procedure is clearly the most restrictive, DOD representatives estimated that the Department had released a record to a physician, rather than to the individual directly, in less than one percent of the cases where access had been requested. (Ex. 101, p. 297)

The agency reached several conclusions from the preceding considerations. First, OSHA concluded that direct worker access to medical records was sound public policy as a general matter even without regard to the occupational health benefits to be gained by access. Second, due to the divergence of views as to whether access should always be available directly to the patient/employee, or whether in certain situations access should be through the employee's physician or non-medical representative, OSHA decided to structure the final standard so as to provide the physician representing the employer with a limited opportunity to release an employee's medical record to a third party rather than directly to the employee.

Under the final standard, the employee may request direct access to his or her records, or give the specific written consent for a designated representative to get access. The standard, however, explicitly encourages the physician maintaining the records to explain the records to the employee when the direct access is sought, and to suggest alternative forms of disclosure if that is felt necessary.

In addition, the final rule adopts the Privacy Commission's designated representative approach in cases of specific diagnoses of terminal illness or psychiatric conditions. Direct employee access to this narrow category of information may be denied if a physician representing the employer has evaluated the circumstances of the request and formed a good faith belief that direct access to this information could prove detrimental to the employee's health. Direct access may only be denied, however, to information directly related to the specific diagnosis that the employee actually has a terminal illness or psychiatric condition. It is OSHA's judgment that there is no basis for anticipating harm to an employee from direct access to other kinds of information, such as tentative differential diagnostic possibilities, or biological monitoring data unrelated to a specific finding of a terminal illness. A concerned physican can fully explain the significance of this information to a worker.

The rare occasion where direct access may possibly be harmful can adequately be dealt with by these provisions concerning physician consultations and access through a designated representative. Where the physician and the patient/employee have previously established a traditional medical relationship of trust and confidence, the employee will undoubtedly seriously consider and probably accede to recommendations of the physician as to what information should be disclosed, and how. Where trust and confidence does not exist or the employee persists in seeking access, then the desire of the employee should normally prevail.

As part of the foregoing decisionmaking, the agency considered and rejected suggestions that the employer or its physician be given discretion to disclose a medical record only to an employee's designated physician. In rejecting so restrictive a suggestion, the agency agreed with the approach of the Privacy Commission. The Privacy Commission was careful to indicate that, even where indirect access was considered appropriate, this intermediary function could be fulfilled by any "responsible person," including family members or friends (Ex. 101, p. 298). OSHA also attaches significance to the likelihood that limiting access to only employee physicians would undoubtedly pose a substantial practical barrier to worker access (*See*, Wrenn, Tr. 40–42; Weiner, Tr. 176–77). Dr. Whorton noted that approximately 20 percent of individuals do not have a primary physician to whom records could easily be transferred (Ex. 11, p. 11). Having a personal physician review medical records could prove costly to an employee. An employee would also have to make arrangements for a personal physician to review the records without any advance knowledge as to whether the record contained anything worth reviewing. These impediments are substantial, and would minimize the use of medical records in the discovery and control of occupational health hazards. Under the final standard, the employee can easily, and likely often will, transfer his or her medical records to a personal physician. Direct access coupled with a broad designated representative provision, however, provides the worker with a better opportunity to judge whether this is in his or her best interests and worth the effort and expense involved.

The one situation where the final standard permits information to be withheld altogether from an employee concerns confidential informants. As noted at the outset of this section, several participants argued that information provided by confidential informants should not be disclosed to an

employee due to confidentiality expectations and the possibility of violence. Confidential informants could include family members and friends of the employee, fellow workers, and management or medical personnel. Dr. Young expressed strong doubts that company physicians often receive confidential information from a worker's family (Tr. 1109), and it is probably also rare that friends of an employee engage in these communications. Where such communications do occur, Dr. Teitelbaum described in some detail how he as a responsible physician would disclose to the patient the identity of the informant and the content of his or her communication (Tr. 137–140). This is a sensitive area, however, in which OSHA recognizes that competing privacy interests are at stake.

In this exception situation, OSHA decided that the identities of fellow employees, personal friends, and family members who may have provided confidential information may be deleted prior to disclosure. This is the one area where OSHA believes that legitimate expections of confidentiality have been created which override whatever marginal occupational safety and health purpose would be served if disclosure of the informants' identities were provided. This provision, however, is limited to the identities of "fellow employees, personal friends, and family members" in the belief that those who stand outside this personal relationship, such as the employer (i.e., supervisory and managerial employees) or another physician or medical person, are not justified in any expectation of confidentiality and should not be protected from disclosure. Moreover, the information provided by the family member, friend, or fellow employee must be disclosed to the extent that this would not clearly identify the informat. Observations of a worker's behavior or health status could be highly relevant concerning occupational disease, particularly since toxic exposures can be the cause of an otherwise unrecognized central nervous system disorder which mimics non-specific behavioral disorders or alcoholism (*See*, VII.C.6, *infra*).

Finally, it is appropriate to stress that this standard is consistent with and builds upon existing principles of occupational medical ethics and developments in the law. Under the common law, the legal obligations of employer-selected physicians depend largely on whether a physician-patient relationship exists as a matter of law. The most important factor in determining whether such a relationship exists is the mutual expectations of the parties, i.e., what kind of understanding exists between the physician and the patient. Other factors which courts have considered include: (1) who is paying for the service; (2) who benefits from the service; (3) the degree of the physician's independence from the payor (if not the patient); and (4) the volitional quality of the patient's decision to consult with the doctor. Each situation thus turns on its particular set of facts (NCCHR, Ex. 125).

The physician-patient relationship imposes on the doctor three basic legal duties: (1) to treat the patient in a manner consistent with acceptable professional standards of care; (2) to disclose to the patient facts and diagnoses pertinent to the patient's medical condition; and (3) to protect the confidentiality of information obtained in the course of the relationship, subject to certain recognized exceptions (61 Am Jur 2d, Physicians, Surgeons, and other Healers, § 100). The duty of disclosure of pertinent facts and diagnoses is particularly relevant to the issue of employee access to medical records.

Traditionally, the courts have indicated that there is no physician-patient relationship between an employer-provided physician and the prospective or actual employee, or at least that there is not the usual physician-patient relationship (Ex. 145; NCCHR, Ex. 125). As a consequence, the case law varies significantly as to what duty of care, if any, the physician owes to the employee (*Lotspeich v. Chance Vought Aircraft*, (1963, Tex. Civ. App.) 369 SW 2d 705; *Riste v. General Elec. Co.*, (1955, Wash.) 289 P. 2d 338; *Beadling v. Sirotta*, (1964, N.J.) 197 A.2d 857; *Hoover v. Williamson*, (1964, Md.) 203 A. 2d 861; *Rogers v. Horvath* (1975, Mich. App.) 237 NW 2d 595; *See also*, Weiner, Ex. 9A, p. 16n.28). In general, the cases which do not acknowledge a physician-patient relationship in the occupational setting involve pre-employment or periodic examinations required by the employer. In all likelihood, a physician-patient relationship is established when an employee voluntarily goes to the company physician with a medical problem and the physician treats the condition (Annas, Ex. 56A, p. 539).

In recent years, the traditional rule of there being no physician-patient relationship, and thus no broad legal duty of disclosure to the employee/patient, has been scrutinized and found to be unacceptable as a matter of professional ethics. The American Occupational Medical Association (AOMA) in its Code of Ethical Conduct for Physicians Providing Occupational Medical Services (Ex. 2(59)), together with various medical and legal commentors on the subject, have taken the position that an occupational physician's primary obligation is to the employee, and the physician should generally be bound by traditional professional obligations (Weiner, Ex. 9A, p. 17 n. 30 (articles cited); Annas, Ex. 56A; NCCHR, Ex. 125). The American Association of Occupational Health Nurses has adopted an identical position (California Occupational Health Nurses, Ex. 123).

This view is also finding acceptance as a matter of law. The judicial trend appears to be in favor of finding a physician-patient relationship in the occupational setting. For example, in *Vella v. Wise*, (1976 Cal.) Contra Costa County Superior Ct., No. 116083, an asbestors worker recovered $350,000 because the physician failed to disclose that an x-ray examination showed the worker had asbestosis. The counsel for the National Commission on Confidentiality of Health Records (NCCHR) has observed that this finding of a fully developed physician-patient relationship is likely to be reflected in future decisions (NCCHR, Ex. 125, p. 11).

A board and virtually discretionless obligation to disclose information to the patient/employee accompanies this growing recognition of the physician-patient relationship in the occupational setting. The physician-patient relationship imposes on the doctor the duty of disclosing to the patient significant information concerning the patient's medical condition, including diagnoses and the hazards of proposed treatments (Ex. 149, § 4 (cases cited)). In the past, some courts recognized a "therapeutic privilege" to withhold information when such non-disclosure is determined by the physician to be in the best interests of the patient. The various factors considered included the mental and emotional makeup of the patient, the prognosis of his/her condition, and the definite or tentative nature of the diagnosis (Ex. 149, § 5 (cases cited)). The duty to disclose has traditionally been judged by the standard of the reasonable medical practitioner in the same or similar locality and under the same conditions (*id.*).

The "modern" trend, however, appears to be a shift towards to patient's right of access to medical information regardless of the doctor's concerns or the local standards of the medical profession. This view is expressed by the commentator to the *American Law Reports (ALR)* 1973 annotation on this issue (Ex. 149, p. 505);

It is submitted that the basic common-law principle that every man is the master of his own body, entitled to do with it as he will, is brought into question in those cases in which a physician who intentionally withholds an unfavorable diagnosis from his patient is judged by the standard of what the reasonable medical practitioner would disclose in the circumstances. Under such circumstances, the patient is denied important information of great potential usefulness in, at the minimum, winding up his affairs. It is suggested that, at least to some extent, the question of whether the patient should know of his condition is not a medical one, although some medical factors are present, but rather, it involves a philosophical issue: who should determine whether the patient is to be informed? Should the medical profession arrogate to itself this determination or should it be left to the patient or his family, or both? It would seem that, absent special circumstances [such as strong possibility of suicide], the determination should be made by the patient. . . . (Footnote omitted)

This modern trend is expressed in the state statutes and case law discussed by Professor Annas (Ex. 56), as well as the Federal Privacy Act (5 U.S.C. 552a(f)(3), as interpreted by OMB Privacy Act Guidelines, issued as a supplement to Circular A–10B, 40 FR 28957) and the deliberations of the Privacy Protection Study Commission (*See also,* Annas, Ex. 56A; Weiner, Ex. 9A, p. 30; HRG, Ex. 122E; NCCHR, Ex. 125, p. 5; PPSC, Ex. 101, p. 297; *Cobbs v. Grant,* 8 Cal. 3d 229, 242 (1972); *Canterbury v. Spence,* 464 F. 2d 772 (D.C. Cir. 1972)).

In addition to ethical and common law obligations to disclose information to employees, direct patient access to medical records has also been identified as basic to emerging notions of the constitutionally recognized right of privacy (Weiner, Ex. 9A, p. 6). The Supreme Court has indicated that the right of privacy involves at least two different kinds of interests: "one is the individual interest in avoiding disclosure of personal matters, and another is the interest of independence in making certain kinds of important decisions." *Whalen v. Roe,* 429 U.S. 589, 599–600 (1977). The first interest, the right to control disclosure of information to others, argues for patient access to information for which the patient is asked to authorize disclosure. As the Privacy Commission stated, ". . . authorization is a meaningless procedure unless the individual knows what he is authorizing to be disclosed" (Ex. 101, p. 289).

The second privacy interest in being able to maintain control over the making of certain highly personal decisions is also directly pertinent to the issue of access to medical records. As has been argued:

The right to know is thus an integral part of the right of people in a free society to have information in order to be able to determine for themselves what their actions will be. It is a personal right, and one with special relevance to the workplace. No right is more basic than the right to protect oneself from life-threatening harm. And it is only when one is armed with a basic knowledge of workplace hazards and how one's own medical record reflects one's reaction to that environment, that one can evaluate risks and act responsibly to protect oneself from those hazards. (Weiner, Ex. 9A, p. 11)

In addition to the physician's independent disclosure duties, the employer's legal responsibilities to employees must also be considered. Case law has traditionally recognized that an employer may be liable for the failure to inform an employee of a disease or phsyical condition disclosed in a medical examination where it is shown that the employer had knowledge, but the employee was unaware, of that disease or condition (Ex. 144). In addition, under the doctrine of *respondeat superior,* an employer may be held liable for a physician's malpractice where the employer was personally negligent in employing or retaining the services of an incompetent physician or surgeon (Ex. 146, s4(c)), or where the furnishing of such free medical attendance was for the employer's own benefit or purposes (Ex. 146, s4(d)). On the other hand, it has generally been held that where an employer gratuitously supplies medical treatment for his sick or injured employees, the *respondeat superior* doctrine is inapplicable and the employer is not liable for the malpractice of the physician or surgeon employed by him provided he exercised ordinary care to select a reasonably competent person to serve in that capacity (Ex. 146, ss3(a), 4(a)). This distinction found in early cases may be outdated, however, since "there should be little difficulty in convincing modern courts that regularly established medical service plans represent the assumption of a contractual obligation on the employer's part, bringing into play the rule that *respondeat superior* applies where such an undertaking is shown, especially where business benefits result" (Ex. 146, p. 564 (footnote omitted)).

Product liability law is also relevant. The manufacturer, in addition to his duty to test, inspect, and keep abreast of the latest developments in the field, also has a duty to effectively warn subsequent users of hazards associated with use of the product (*Borel* v. *Fibreboard Paper Prods. Corp.* 493 F. 2d 1076, 1089–1090 (5th Cir. 1973)). The *Borel* case, the leading products liability case involving occupational disease, upheld a claim brought by an asbestos insulation worker for failure to warn of the hazards of asbestos exposure. The Court held that "an insulation worker no less than any other product user, has a right to decide whether to expose himself to the risk" and must be fully apprised of the extent and gravity of the hazard faced, *id.* at 1089 (Weiner, Ex. 9A, p. 14 n. 24 (cases cited)). While workers' compensation statutes would normally bar such lawsuits against one's actual employer, some courts have allowed independent personal injury suits for breaches of this duty to disclose (Weiner, Ex. 9A, p. 12 n. 20 (cases cited); NCCHR, Ex. 125, p. 1; Ex. 148, s6 (cases cited)); BNA OSH Reporter, May 10, 1979, p. 1738).

The foregoing analysis of the relevant law and medical principles provides a solid foundation for OSHA's conclusions that direct worker access to medical records coupled with a broad designated representative provision is sound public policy. The promulation of this final standard to guarantee employees a quick and effective means of gaining access for occupational health purposes can thus be viewed as a logical outgrowth of a variety of legal and policy arguments which oppose maintaining employer and physician discretion and favor direct worker/patient access to medical records.

C. Potential Misinterpretation of Medical and Exposure Records

Employee and designated representative access to both medical and exposure records was also opposed on the grounds that these records would often be misinterpreted and misunderstood. Statements were made that most employees are incapable of understanding the highly technical language, abbreviated short-hand and illegible writing that is often found in medical records. The likelihood of misinterpretation leading to unnecessary anxiety or inappropriate action was therefore considered great.

We believe that the patient should have limited access, and the reason I say 'limited' is that there are many things in medical records that can be bewildering and misunderstood by patients, and I think the patient should have access to their medical record, but I think someone should be available at the time they review the medical record to be able to interpret any segment of the record that may not be clear to the patient or to explain to that patient some of the acronyms and abbreviations used which they might otherwise interpret as derogations. (Dr. Steen (AMA), Tr. 2403–4)

* * * * *

If OSHA truly believes that employee access will increase the employee's

recognition of hazards in the workplace, then OSHA must also believe that employees are capable of interpreting scientific test results and/or conducting epidemiological studies. And I think as physicians in industry we have tough enough problems with that ourselves. (Dr. Bernacki (NAM), Tr. 2190)

* * * * *

The correct interpretation of data pertaining to environmental hygiene, x-rays, functional capacity and laboratory tests is difficult even for the trained professional. Nothing would be accomplished by releasing this information to the employee, or to his nonprofessional "designated representative." (Dr. Hine (ASARCO), Tr. 1618–19)

* * * * *

The contents of the medical record are probably not understood by many of the people who would opt for practically unlimited access to such a record. . . . Many items in the record are written in the physician's jargon or in abbreviations or acronyms that can be misleading or cause unnecessary anxiety for the patient or others. To expose the patient to these written mental gymnastics of the physician is not in the best interest of the patient. (Dr. Spraul (Monsanto), Tr. 1909, 1910–11)

(*See also,* Kentucky Dept. of Labor, Ex. 2(5); Miles Laboratories, Inc., Ex. 2(146), pp. 1–2).

There was also testimony that exposure records can be as technical as medical records and are equally subject to misinterpretation. Thus, according to the API, which presented Tenneco's manager of industrial hygiene on this issue:

. . . [S]uch data will rarely provide reliable or useful information concerning an individual worker's exposure. . . . [T]he release of raw industrial hygiene data to workers who lack the training and experience necessary for proper interpretation would add little, if anything, to their knowledge of workplace hazards, and in some cases be unnecessarily alarming. Consequently, professional interpretation and review is an essential part of any program for releasing industrial hygiene data to workers. (Ex. 69, pp. 2,4; Ex. 158, pp. 31–2).

OSHA agrees that professional evaluation and interpretation will often be important, but does not agree that the possibility of occasional misunderstanding should enable employers to deny access to either medical or exposure records. The solution reflected in the final rule is to provide full worker access to the records, while at the same time encouraging the employer to offer whatever professional interpretation the employer feels is necessary. The worker, however, retains the right to personally evaluate the record, and have independent analysis conducted by professionals and non-professionals alike. If a worker is incapable of understanding something in a medical or exposure record, the worker will most likely seek the assistance of someone more knowledgeable whom he or she trusts (*See,* USWA, Ex. 160, pp. 8–9; Dr. Wegman, Ex. 10B (article on project to train industrial workers in health hazards surveillance); AFL–CIO, Ex. 152, p. 51; Dr. Ziem, Ex. 2(69), p. 2).

In considering the ability of workers to understand the contents of medical and exposure records, or to direct pertinent questions to those who do, it is important not to underestimate the intelligence and abilities of American workers. American workers, after all, have built and now operate and maintain the most technologically advanced and complex industrial society in the history of man. There is no basis for suggesting that exposure and medical records are somehow so inherently mysterious or complex that an informed adult cannot make beneficial use of them. Exposure records concern the identity of the chemical or physical agent measured, the quantity measured, and the circumstances under which the measurement was made. Workers can understand these matters, or be instructed as to their significance in specific situations. The same can be said with regard to medical records, particularly since the lay public is aware of many medical terms and medical conditions. Workers may also have received training and education as to disease processes known to be associated with the toxic substances to which they are exposed. Finally, a worker should understand much of the contents of his or her medical records before examining them if the physician who prepared the records fulfilled his or her ethical obligation to inform the worker of pertinent medical diagnoses and information.

Additional evidence in the record further convinced the agency that this issue of possible misinterpretation should not stand as an impediment to worker access to medical and exposure records. The comments of Dr. Teitelbaum, Professor Annas, and Mr. Spatz of the Cement, Lime and Gypsum Workers, were particularly on point:

If physicians cannot maintain records intelligible to a patient with appropriate assistance, then I suspect that they are incapable of maintaining medical records intelligible to themselves. Although there are numerous abbreviations, shortcuts and jargon utilized in medical records, and although physicians frequently include early diagnostic opinions which are not substantiated by objective information, records are still readily capable of interpretation by a competent, intelligent physician to a concerned patient.

Certainly our own failure to use the English language adequately should not disqualify the patient from information about himself. We cannot solve the problem of access by hiding behind a screen of confusion. A decision that the patient should not have access to his records or not be able to transmit them because he won't understand them is no decision at all. It merely immortalizes our own failure of communication.

Records should be intelligible to any individual who has competence in scientific disciplines. This person can then explain the record to the patient. (Dr. Teitelbaum, Tr. 121–122)

* * * * *

The patient should also have the right to have records submitted to others whom he feels will make a positive contribution to his health and safety. The former traditional requirement that the medical records be released only to other medical personnel must be viewed with a jaundiced eye. I have occasionally met physicians who were less capable of understanding industrial medical records which were generated about their patients than the patient himself was, because the physician had a weak education in chemistry, pharmacology or toxicology or lacked familiarity with plant working conditions. (Dr. Teitelbaum, Tr. 123)

* * * * *

It is my view that there should be no exceptions to direct patient access, and that none of the arguments that are set forth in support of limited access are persuasive. The primary one, that patients won't understand the information, can be answered in two ways. First, it is the legal and ethical duty of the physician to inform the patient about his condition and its implications, and this may further indicate a shortcoming of this particular relationship. Second, any patient who does not understand his records is likely [to] seek the aid of someone who does, and this will solve the problem. Finally, once access is general, physicians are more likely to write records that are understandable by their patients. (Annas, Ex. 56, p. 7a)

* * * * *

The issue of confidentiality which has been raised in opposition to this rule must be addressed. First, in our opinion, all information in an employee's medical file should be disclosable directly to that employee with absolutely no censorship. The members of our union are intelligent adults who have the ability to read, analyze and understand. If information in the medical records require medical interpretation, that employee has a chance to ask his personal physician for such an interpretation. To deny information on the basis that the company or the company doctor can determine best what an employee should know is demeaning paternalism.

(Spatz (Cement, Lime, Gypsum Workers), Tr. 1201–02). Comparable comments were made by other participants (Dr. Wegman, Tr. 204–05; Samuels (AFL–CIO IUD), Tr. 956–57; Dr.

Swartz, Tr. 2363, 2370–73; AFL–CIO, Ex. 152, p. 25–27; USWA, Ex. 160, p. 7–8).

Finally, it is relevant to consider how workers will likely exercise their access rights. Many workers will transfer their records directly to professionals such as personal physicians, or union physicians and industrial hygienists, and let them analyze the records. In other cases, workers will probably seek access out of interest and curiosity, and will ask their employer for an explanation of confusing information. Once this is forthcoming, that will be the end of the matter. In other cases, workers will have lingering questions and will consider their employer's responses to be unsatisfactory. These workers can be expected to question their personal physicians, union, friends, family, and agencies such as OSHA and NIOSH (*See*, Electronics Safety and Health Project, Tr. 1609–10). As a result, worker access to records will often lead to independent informed analysis of the record, even when the worker does not completely know what the record means.

In light of the foregoing considerations, OSHA concluded that arguments about the possibility of misinterpretation of records lacked merit, and should not affect promulgation of the final standard.

D. Designated Representative Access to Medical Records and Potential Harm to Employee Confidentiality Expectations

The final standard provides for the transfer of an employee's medical records to a designated representative upon the specific written consent of the employee. The Summary and Explanation portion of the preamble (VII.C.10, *infra*) discusses in detail all aspects of this specific written consent process. The standard closely follows the recommendations of the Privacy Commission and the AMRA, and seeks to minimize the possibility of blanket, perpetual, and ill-considered access of third parties to confidential medical records. The proposed standard provided for access by third parties upon the bare written consent of the employee, without the elements of this written consent being defined. This lack of a more formal consent process was criticized by numerous participants. Arguments were made that the proposal's designated representative access provisions would seriously interfere with the physician-patient relationship, and the proposed rule was significantly changed to avoid this potential problem.

Objections to the proposal focused on potential invasions of an employee's privacy expectations from unrestrained third party access to identifiable medical records. The medical directors who testified at the hearings on behalf of their companies or trade associations stated that confidentiality is an essential ingredient of effective medicine. Without assurances of confidentiality, they said it would be difficult for them to obtain the full cooperation of the worker in providing complete medical information or in following the medical advice given (Dr. Karrh (DuPont), Tr. 309; Dr. Dinman (ALCOA), Tr. 430; Dr. Hockwald (AOMA), Tr. 1527; Dr. Tetrick (National Steel Corp.), Tr. 1980–81; Dr. Duncan (NAM), Tr. 2180; Dr. Steen (AMA), Tr. 2392; Dr. Hilker (Ill. Med. Society), Tr. 2525–6; API, Ex. 66B, p. 2, Ex. 66D, p. 3; AMOCO, Ex. 76, p. 2). It was therefore said that the occupational physician-patient relationship is based on mutual trust and that information gathered in the course of this relationship is kept confidential. Accordingly, this information is protected from unconsented disclosure to management or anyone outside the medical department. While the existence of a few "bad actors" was acknowledged by industry (Dr. McLean (AOMA), Tr. 1524–5, 1529; Dr. Wolkonsky (AMOCO), Tr. 2246; API, Ex. 158, p. 24), it was stated that a duty of confidentiality is the ethical standard by which the occupational physician measures professional conduct. Standard No. 7 of the AOMA's Code of Ethical Conduct requires the occupational physician to:

> Treat as confidential whatever is learned about individuals served, releasing information only when required by law or by overriding public health considerations or to other physicians at the request of the individual according to traditional medical ethical practice, and recognize that employers are entitled to counsel about the medical fitness of an individual in relation to work but are not entitled to diagnoses or details of a specific nature. (Dr. Hockwald (AOMA), Tr. 1529; Ex. 2(59)).

The medical directors indicated that the AOMA code was the policy required of their medical staff.

Maintaining that the occupational physician-employee relationship is based on mutual trust and confidentiality, industry argued that the designated representative provision of the access rule would be harmful to that confidential relationship, and make it difficult, if not impossible, for physicians to adhere to their ethical duty of confidentiality. API's position is representative:

> Even in circumstances when third party access is lawful, OSHA's proposal to permit third party access merely upon obtaining a bare "written consent" would prove inadequate. OSHA's "written consent" procedure would not require a third party to particularize his purpose for access or specify the information he seeks. Nor would this "consent" have any expiration date. Thus, the proposal would permit a third party to obtain sensitive, personal information which he never needed to see, including information placed in the record long after a worker's "consent" was given. This is hardly the sort of procedure which will protect the confidentiality of doctor-patient exchanges. (Ex. 158, p. 33)

Industry witnesses said that if unconsented third party access to employee records was permitted, employees would be less candid during medical consultations, or perhaps even refuse to participate in voluntary medical programs altogether (Dr. Dixon (SOCMA), Tr. 520; Dr. Spraul (Monsanto), Tr. 1911; Dr. Tetrick (National Steel Corp.), Tr. 1979; Dr. Duncan (NAM), Tr. 2180; ALCOA, Ex. 15, pp. 2, 6; DuPont, Ex. 2(148), pp. 8–15). Several industry witnesses also maintained that unconsented third party access would cause physicians to engage in "defensive" recordkeeping practices, either by recording more information than is necessary or by not recording sensitive information which they would not want the employees themselves or third parties to see (Washington Legal Foundation, Ex. 2(96); AAOM, Ex. 2(101); Mayo Clinic, Ex. 2A(16), p. 2; Skiba (Magma Copper), Tr. 1455; Dr. Spraul (Monsanto), Tr. 1911–12; Dr. Joyner (Shell), Tr. 2228–9; MVMA, Ex. 153, pp. 6–7).

API suggested that the Privacy Commission's recommended model consent requirement should be developed as "a positive first step" toward informed consent (Ex. 158, p. 33; cf., Ex. 101, p. 315) (Privacy Commission). OSHA followed this suggestion, and further refined the specific written consent procedure in light of other evidence in the record (*See*, VII. C.10, *infra*). To give specific written consent, an employee will specifically have to indicate in writing who is being authorized to disclose record information, who may have access to it, the general nature of the information to be disclosed, and a general description of the purpose for the disclosure. If the employee wishes, he or she may specify information which is not authorized to be disclosed and may place conditions on its use or redisclosure. The authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of signature. The authorization

may be revoked prospectively at any time. These procedures will assure that the employee controls the amount and kinds of information available to the designated representative, and what the representative can do with it. OSHA is confident that these improvements to the standard will prevent any harm to an employee's legitimate expectations of confidentiality.

It is important to stress that in considering the issues of confidentiality and designated representative access to medical records, the only significant issues concern who can be a representative (with consent) and the nature and necessary elements for consent. The law has firmly established that there is no breach of the traditional duty of confidentiality when disclosure is made to a third party on the basis of the consent of the patient (Ex. 147; 70 C.J.S. Physicians and Surgeons, s36; Annas, Ex. 56B, pp. 148–9). The suggestion that designated representatives access to personally identifiable medical records should be conditioned on the specific written consent of the individual employee was endorsed by union and worker testimony (McDougall (IBT), Tr. 916; UAW, Ex. 63, pp. 4, 9–10; AFL–CIO, Ex. 152, pp. 52–53, 60, Appendix I; USWA, Ex. 160, pp. 17, 19). Virtually no one suggested that access to personally identifiable medical records should be provided to unions or other representatives without the consent of the individual employee (*But see*, ICWU, Ex. 106, p. 1).

As to who can be a designated representative, the final standard embodies the view that once specific written consent is obtained, no additional restrictions, such as limiting access to physicians or industrial hygienists, are needed. Since it is the employee's right to have access to the complete record, the employee should, by the consent procedure, control the conditions of disclosure and redisclosure. Access to an employee's own records should be as broad as the patient/employee desires (Dr. Wegman, Tr. 206–7; Annas, Tr. 1751–52; AFL–CIO, Ex. 152, p. 52).

There are some who would restrict access, even with consent, to another health professional. However, such a restriction flies in the face of the principle of independence in making basic life decisions, as discussed previously. Just as the individual should have access to his or her own record, or should be able to designate any other agent to receive that record, the individual should be able to consent to access by any other person whom the individual designates. It is up to the individual to decide whether such consent is in his or her own best interest. Rigid rules limiting this freedom of choice would not redound to the benefit of the worker. (Weiner, Ex. 9A, pp. 39–40).

In addition, independent of the specific written consent procedure of the final standard, potential harm to an employee's expectations of confidentiality must be viewed in light of the nature of the employee's expectations. If there is little expectation of true confidentiality, then there is little risk of harm, if any, by providing the employee broad discretion to give medical records to whomever the employee chooses. Although OSHA, employees, unions, employers, and occupational physicians alike all agree that the ethical principles of confidentiality should apply to the workplace, there is considerable evidence in the record that employees as a rule neither have, nor could be expected to have, reasonable expectations of confidentiality vis-a-vis their medical records.

The assertion that occupational medicine as currently practiced is normally marked by a confidential and trusting relationship between physician and patient was widely refuted by numerous participants (Morgan (PHILAPOSH), Tr. 821; Wilson (LOHP), Tr. 1707; Becker (USWA), Tr. 2379–82). Testimony from both labor and management indicated the existence of standard practices which tend to undermine the ability of the physician-patient relationship in industry to be based on mutual trust or the maintenance of confidentiality. Several witnesses testified that: (1) workers are often required to submit to pre-employment physicals and other examinations as a condition of employment with no choice of the physician who conducts these exams (Dr. Dinman (ALCOA), Tr. 441; Dr. Dixon (SOCMA), Tr. 537–8; Payne (ACTWU), Tr. 835; Samuels (AFL–CIO IUD), Tr. 948–9; Dr. Gresch (Allis-Chalmers), Tr. 2280; UAW, Ex. 63, p. 5); (2) company physicians commonly testify without the consent of the employee (and often favorably to the employer's interests) in arbitration and workers' compensation cases (Laden (USWA), Tr. 668; Mroczkowski (USWA), Tr. 1175; Electronics Safety and Health Project, Tr. 1614–15; Dr. Herrmann (Johnson & Johnson), Tr. 1843); (3) workers have often been required to sign releases for the blanket disclosure of medical information to employers in order to qualify for various benefits (Dr. Dinman (ALOCA), Tr. 443; Sheppard (PHILAPOSH), Tr. 809; Sheratt (Data General), Tr. 1997; USWA, Ex. 122A; Chamber of Commerce, Ex. 134, p. 4); and (4) to receive payment, employees typically must authorize the release of all information to the insurance company, who in turn may release the records to the employer's accounting or benefits department (Dr. Karrh (DuPont), Tr. 357; Dr. Jenkins (ICWU), Tr. 738; Becker (USWA), Tr. 2387; NCCHR, Ex. 58, pp. 32–3; Privacy Commission, Ex. 101, p. 268). These practices, while not common to every company, are sufficiently widespread to be considered inherent features of the industrial system.

The rulemaking record supports a further conclusion that breaches of confidentiality and denials of information which are contrary to established corporate policy occur at the local plant level to a greater extent than corporate management or the medical director perhaps realizes (USWA, Ex. 160, p. 5). This is consistent with the finding of the Privacy Commission that "among organizations that have adopted policies or practices to regulate the handling of records about employees, few have any way of checking to see if they are being carried out uniformly," and that "action taken at the corporate level is not always communicated to field offices" (Ex. 101, p. 234).

Moreover, the majority of companies do not have a full-time occupational physician in charge of their medical recordkeeping practices. The Privacy Commission has noted that personnel departments over the years have expanded to include, in many cases, the handling of occupational medicine and safety records, as well as insurance records and counseling records (Ex. 101, p. 225–6). This trend has placed more and more employee medical records in the hands of non-medically trained personnel. As a result, there is likely to be less sensitivity to confidentiality than when the medical records are under the exclusive control of a physician. For instance, two personnel managers who testified at the hearings, both responsible for the medical programs within large companies, indicated that they retained the authority to examine employee medical records even though they were not themselves physicians (Skiba (Magma Copper), Tr. 1459–60; Sheratt (Data General), Tr. 1996). One had never heard of the AOMA or its Code of Ethical Conduct (Skiba (Magma Copper), Tr. 1501).

This statement of facts from the National Labor Relations Board case of *Colgate-Palmolive Co.*, Case No. 17—CA—8331, —— NLRB —— (——) is also revealing:

Respondent (the Company) regards these medical files as highly confidential, and permits only limited access by authorized individuals, namely [the employee relations

manager], the company doctor and nurse, the plant manager, and certain employees within the personnel department (p. 8, sl. op.).

Similarly, in the CBS "60 Minutes" show on "Brown Lung," televised February 4, 1979, Dan Rather reported that, after being told of several workers who had contracted byssinosis ('brown lung disease') without having been told by the company that their respiratory problems were occupationally related, the president of West Point Pepperell "one hour later . . . had pulled the medical files of three workers . . ." (Ex. 117, p. 8).

In addition to the involvement of personnel departments and other non-medical company officials in medical records management, occupational medicine is often conducted primarily by either an on-site nurse, industrial health clinic, or a private practitioner. While occupational health nurses have their own code of ethics which is protective of patient confidentiality (Ex. 123), testimony indicated that nurses as a group are clearly more vulnerable than physicians to employer pressure for unauthorized disclosures of medical information (Dr. McLean (AOMA), Tr. 1562; Garry (Cal. Occupational Health Nurses), Tr. 1727, 1729).

The relationship between the employer and a contract physician may similarly result in medical information being supplied to the employer which constitutes a breach of confidentiality. Typically, the information is released to the employer based on a standard release form signed by the employee, but in some cases diagnostic information required by state law is disclosed without a release. In most cases the companies are small, and the information is received by the personnel or industrial relations manager (Dr. Jacknow (Chamber of Commerce), Tr. 1007–13; Malter (Health Evaluation Programs), Tr. 2315). Based on his experience and observations, Dr. Marvin Amdur, director of the Buffalo Industrial Medical Center and an independent witness with 40 years of experience in the private practice of occupational medicine, stated:

> I would regard the problem of so-called confidentiality to be almost a non-existent device used to deny accessibility of records.
>
> Every day such confidentiality is breached in a multitude of situations. We do not examine any applicant for employment or reinstatement who has not already indicated to his employer that pertinent records may be returned to that employer . . . I want you to remember also that in the industrial setting, the employee is not a patient of that physician. That contact is usually an arm's length one, certainly not comparable with the relationships that may exist between the same employee and his family physician. (Tr. 575–6)

Accordingly, industry's basic assumption concerning the physician-patient relationship and the protection of confidentiality was widely disputed. Given that there is little genuine employee expectation of true confidentiality as to employment medical records, whatever expectations exist cannot possibly be harmed by authorizing an employee to disclose medical records to third parties of the employee's choosing through a process of specific written consent (For further discussion on the issue of employer abuse of employee medical records, *See,* IV.H, *infra).*

E. Potential Harm to Occupational Medical Programs

Arguments were also made that broadened access to medical records would inevitably impair the creation, expansion and effectiveness of occupational medical programs. While no participant would identify itself or any particular company as a likely candidate for cutting back its medical program (Dr. Karrh (Dupont), Tr. 366, Ex. 2(148), pp. 8–15; Batchelor (Diamond Shamrock), Tr. 425; Dr. Dinman (ALCOA), Tr. 448; Kwon (ORC), TR. 1853; Blaiser (NAM), Tr. 2196–97), it was nevertheless stated that, due to the burdens of compliance, some companies may decide to do so (Dr. Dixon (SOCMA), Tr. 518–22; Ryan (RMA), Tr. 1212; Dr. Duncan (NAM), Tr. 2179; Drake (Maytag), Tr. 2475). Because of the requirement for providing access to studies based on exposure or medical records and the difficulty in getting employees to volunteer, it was said that there may be a detrimental effect on company-sponsored health research or epidemiology studies (Dr. Hine (ASARCO), Tr. 1619–20; Dr. Wolkonsky (AMOCO), Tr. 2251; MVMA, Ex. 153, p. 5; *See also,* Dr. Johson (Goodrich), Tr. 426; Dr. Dixon (SOCMA) Tr. 520; Dr. Duncan (NAM), Tr. 2180). The observation was also made that the standard could make it more difficult to attract private physicians to occupational medicine (Dr. Dixon (SOCMA), Tr. 521; NVMA, Ex. 153, pp. 6–7). Further suggestions were made that access to medical records might result in defensive medical practices where physicians either decline to place important information in medical records, or enter an overabundance of information (Skiba (Magma Copper), Tr. 1455; Dr. Joyner (Shell), Tr. 2228).

It is OSHA's judgment that these predictions are exaggerated, since no concrete evidence was presented which indicated the standard would have a negative impact on corporate efforts to provide occupational health programs. As previously noted, corporate witnesses stated that, in fact, there would likely be no reduction in their occupational medical efforts. This prompted the AFL–CIO to conclude that "the evidence in the record does not support the claims of a far reaching negative impact on occupational health programs" (Ex. 152, p. 25). In addition, Dr. Wegman remarked that, based on his experiences with the Division of Occupational Hygiene in Massachusetts:

> Some have stated that the emplyees' access to medical records will discourage medical surveillance programs, particularly because it punishes those most progressive employers who choose to institute programs beyond those required by the standards. . . . It is my opinion that employers who are committed to maximum protection of worker's health will find this proposed regulation consistent with their commitment. (Ex. 10, pp. 4, 6)

Dr. Wegman further argued that the broadest possible access to exposure records serves to improve employer-employee communication on health issues, rather than reduce data collection efforts (Dr. Wegman, Tr. 198–200). In addition, Dr. Silverstein saw no possible impairment to the operations of fee-for-service medical clinics due to the operation of the rule (Tr. 2022).

OSHA concedes that there may be some situations where employers reduce occupational health programs rather than permit employees to know the results of exposure monitoring and medical tests. Access will increase employee efforts for more healthful working conditions, and may well expand efforts to obtain workers' compensation, product liability and other legal remedies for harms inflicted. Some employers may conclude that it is wiser to have little or no occupational health program if employees are given the right to know what the employer knows about hazards in the workplace (*See,* Ritchie, Ex. 2(2); Fairfield Mfg. Co., Ex. 2(25); New Jersey Dept. of Labor, Ex. 2(58), Attach. (Hercules Corp.); Olin Corp., Ex. 2(71); Milwaukee Constr. Safety Council, Ex. 167(9–7), p. 1). OSHA is hopeful, however, that few employers respond in this fashion to the final rule, since the standard should be viewed as consistent with employers' commitment to occupational health. The compliance burdens of this standard are minimal, requiring only access to and retention of records the employer either voluntarily creates or must as a matter of law create. No good faith argument can thus be made that compliance burdens will

hinder the creation or expansion of occupational health programs.

OSHA also sees no genuine possibility that access to the results of health and safety studies by workers, their designated representatives, and their unions could impair voluntary participation of employees. Workers voluntarily participate in studies precisely because they want the studies to determine if problems exist so that the problems can be corrected. It is difficult in this context to understand how employees would be content for their employer to fully know the results of the study, but would not want their union, their designated representatives, or themselves to know the results of the study.

Similarly, OSHA sees no possibilty that this standard will deter physicians from entering the field of occupational medicine. As George Taylor of the AFL–CIO pointed out (Tr. 638–39), physicians presumably choose the field of occupational health because they recognize a challenging opportunity to serve the medical needs of employees. This motivation should not be affected by employee access to medical records—an obligation physicians are increasingly facing in private practice as governed by state law.

OSHA also sees no evidence that the standard will result in defensive or improper recordkeeping practices. The assertion that the access requirements would result in many physicians failing to put adequate reports in the medical records was disputed by statements that such action may constitute unethical behavior (Dr. Parkinson, Tr. 1098). In addition, the AMA spokesperson reported that there is no evidence that the existence of broad access rights by law in a number of states has resulted in overly conservative or defensive medical recordkeeping practices or a lowering of medical standards (Dr. Steen (AMA), Tr. 2406). Dr. Young, Director of the Department of Medicine (including a large occupational medicine section) at the Cook County (Ill.) Hospital further stated:

> I've come across testimony and I think it was enumerated in the initial remarks, that the impact of such regulations would result in occupational medicine doctors or company doctors' failure to put adequate reports in the patient's records, or perhaps even implying they would modify exposure records.
>
> I can't believe that's true. If it is true, it's unconscionable, and speaking for the doctors in training in my institution, the doctors who are teaching them, I will represent to you, Judge, that there will be no lowering of ethical standards should these regulations become part of the law of the land, and I really rather resent the implication coming from occupational medicine resources that their colleagues would ever be guilty of such chicanery. (Tr. 1098)

Dr. Parkinson also noted that access should not affect the content of the record since medical records are created for the ultimate benefit of the worker's health (Tr. 1141).

As a final matter, it is appropriate to state that the record supports a finding that patient access to medical records will actually serve to improve the effectiveness of occupational medical programs. Access will likely serve to "open up and further develop the relationship between doctors and patients so that maybe there would be a greater willingness on the part of patients to place some confidence in the doctor they were seeing" (Dr. Silverstein (UAW), Tr. 2022–24). As Prof. Annas indicated, "patients who ask to see their own medical records are not 'less anxious' when refused than they are if access is provided" (Annas, Ex. 56, p. 5). Prof. Annas also referred to a number of studies which indicated that:

> [I]ncreased access to patient records promotes a doctor-patient relationship and promotes patient education, permits patients to be less anxious and permits [them] to then be more ready to carry out doctor's recommendations and permits patients to be more active participants in their health care in general. (Tr. 1745; Ex. 56, pp. 5–6)

This also reflects the opinions and personal experiences of Dr. Whorton of the Labor Occupational Health Program (U. of California, Berkeley) (Ex. 11, pp. 10–11), Dr. Parkinson, Professor of Occupational Medicine at the University of Pittsburgh and a medical consultant to the United Steelworkers Union (Tr. 1142, 1148), and Vicki Laden, a health consultant to Steelworkers locals in Baltimore (Tr. 682). Finally, Dr. Young described the practice at the Cook County Hospital as follows:

> If the patient asks for the record, they of course get it.
>
> I'm encouraging them [staff physicians] to have the patients read their charts while they're being taken to x-ray and so on. It enhances patients' understanding of their condition. It improves the patient's ability to ask the right questions about their illness. And I think it's something that should become more widespread.
>
> MR. SPILLER: You say in your experience greater access improves relationships with the patients and physicians?
>
> DR. YOUNG: Absolutely. It can only improve because the patient sees there's a correspondence between what you're telling him and what you're writing down. It allows him in a deliberate way to ask questions about a particular test or works you're using. It only enhances. (Tr. 1108)

It was also suggested that "once access is general, physicians are more likely to write records that are understandable to their patients" (Annas, Ex. 56, p. 7a; cf., Dr. Teitelbaum, Ex. 8, pp. 6–7). Moreover, the spokespersons for the AOMA were unable to cite any studies which would indicate that greater access will erode the physician-patient relationship (Dr. McLean and Dr. Hockwald, Tr. 1561). Therefore, the record supports the view that direct patient access to medical records actually promotes the therapeutic relationship between physician and patient.

F. Trade Secrets and Records Subject to this Standard

The next major access issue concerns employer fears that the exercise of access rights could serve to impair or destroy the competitive value of trade secrets. These fears were not directed toward OSHA access to records, but rather toward worker and designated representative access. The proposed rule contained no provisions specifically addressed to trade secrets, and several employers and employer organizations, who commented on the proposal prior to the hearings, criticized this lack of protection. At the outset of the hearings on the proposal, OSHA acknowledged this issue, and solicited comments on how employer concerns over proprietary information could be accommodated with the need for workers to know the nature, extent, and consequences of exposure to toxic substances (Wrenn, Ex. 7, p. 13; Tr. 29–31). While recognizing the legitimacy of trade secret concerns, the agency indicated its preliminary intention that access rights would prevail over employer desires to maintain complete secrecy (Wrenn, Tr. 29–31, 65–67).

Considerable additional argument and testimony were received on this issue. On the basis of the total record, the agency concluded that workers have a fundamental need to know the identity of, and extent of exposure to, toxic substances and harmful physical agents, and any resulting health effects, regardless of whether or not the information is a trade secret. The final standard is founded in part on the judgment that, as a matter of public health policy, employers must not be permitted to deny worker access to this information which is needed for the purposes of detecting, treating, and preventing occupational disease. Access is afforded to chemical and physical agent identity, level of exposure, and health status information regardless of employer trade secret claims. The final standard, however, has been structured to accommodate trade secret concerns where protection of trade secret information does not conflict with the

overriding purposes of the standard. The provisions of the final standard minimize possible misuse of this information, and the agency is confident that a reasonable balance has been struck between the potentially conflicting goals. The legal analysis supporting the agency's decisionmaking is discussed at V.B., *infra*, and the standard's provisions concerning trade secrets are discussed further in the Summary and Explanation portion of the preamble (VII.F, *infra*).

Industry comments and testimony expressed a wide variety of potential trade secret problems with the language of the proposal. Several comments raised general concern over a lack of protection for trade secrets, without specifying what kinds of trade secrets would likely be contained in records subject to this rule (Chamber of Commerce, Ex. 2(162), p. 9; Mobay Chemical Co., Ex. 2(97), p. 5; Allied Chemical Co., Ex. 2(107), p. 3; Union Carbide Corp., Ex. 2(104), p. 2). Other participants were more definite as to the types of trade secret information which might be contained in requested records. The greatest concern was expressed over secret manufacturing processes and technology (Blaiser (NAM), Tr. 2192–95, 2173–75; Sheratt (Data General Corp.), Tr. 1999–2003, 1991–94; SOCMA, Ex. 2(163), p. 4, Tr. 524; National Constructors' Association, Ex. 2(98), pp. 3–4; MCA, Ex. 2(125), pp. 7–9; Minnesota Mining and Manufacturing Co., Ex. 2(129), pp. 6–7; Ex. 98, pp. 2–3; Dow Corning Co., Ex. 2(176), pp. 1–2; General Electric Co., Ex. 2(178), pp. 2–3). Concern was expressed that the precise percentages of chemicals in a mixture, which can be a trade secret, could be disclosed (SOCMA, Ex. 2(163), p. 4, Tr. 524; MCA, Ex. 2(125), p. 8). It was argued that the mere identity of a chemical could be a trade secret, particularly with respect to secret catalysts and intermediates which could not be discovered by chemical analysis of the end product (Bernacki (NAM), Tr. 2193–95; Batchelor (MCA), Tr. 407–13, Ex. 2(125), pp. 7–9; Dixon (SOCMA), Tr. 531–32, Ex. 156, pp. 27–29; Dupont, Ex. 150, pp. 12–16; General Foods Corp., Ex. 2(99), pp. 3–4; Sangamo Capacitor Div., Ex. 2(100), pp. 1–3; Polaroid Corp., Ex. 2(187), p. 2). A recent OSHA enforcement case indicated that even in situations where the identity of a chemical was not a trade secret, levels of exposure to the chemical could possibly be a trade secret (*Secretary of Labor* v. *Olin Corp. & OCAW*, OSHRC Docket No. 77–4369, Ex. 26C). Finally, although the content of employee exposure records was the focus of employer trade secret concerns, several participants indicated that employee medical records could also contain trade secret information (Dixon (SOCMA), Tr. 524; Mobay Chemical Co., Ex. 2(97), p. 5; Union Carbide Corp., Ex. 2(104), p. 2; Chamber of Commerce, Ex. 2(162), p. 9; Dow Corning Co., Ex. 2(176), p. 2; Polaroid Corp., Ex. 2(187), p. 2).

In contrast to these expressions of concern, several participants generally rejected the possibility that access to records would lead to competitive harm to employers. First, there was skepticism that exposure records would reveal process or percentage mixture information beyond what could be gathered from analysis of the end product (AFL–CIO, Ex. 39, p. 4; ICWU, Ex. 28, p. 7). For instance, arguments were made that competitors using sophisticated chemical analytical techniques could already determine the identities of end product constituents (Weiner, Ex. 9A, p. 25; AFL–CIO, Ex. 152, p. 28; ICWU, Ex. 28, p. 7). Secondly, arguments were made that exposure records would often not disclose information about secret processes beyond what workers already see or know (AFL–CIO, Ex. 152, p. 28).

Further arguments were made that even where access to records might reveal to workers previously unknown trade secrets, there was no reason to expect that the information would be abused.

> Many management employees—chemical engineers, supervisors, etc.—are privy to complete confidential information about trade secret products. Thus, given the scope of information available to management employees and the existing potential for abuse by these individuals, there can be little merit given to claims that worker access to much more limited information will threaten trade secret confidentiality. Taylor (AFL–CIO), Ex. 39, p. 4)
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> * * * * *
>
> Claims that disgruntled employees will reveal this information to competitors have no basis in fact or in logic. Workers have access to trade secret information in the absence of this regulation and as a matter of routine practice are required to sign pledges of confidentiality (Tr. 410). No evidence has been introduced into the record of this rulemaking showing isolated incidences or a history of abuse of that information. Moreover, workers want to keep their jobs, not lose them to a competing firm. Unions represent workers and their interests, not the interests of industry competitors. (AFC–CIO, Ex. 152, p. 28)
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> * * * * *
>
> Additionally I would just like to say that trade secrets are a spurious argument, particularly in relationship to labor unions because I don't think you can document any situation where the trade secrets are more likely to be released by the employees in the bargaining unit than they are in any other portion of management. The other thing is that it works to the advantage, particularly of an organized worker, to have his plant expand because of trade secrets; and I think that to suggest that an employee is going to give away that information which might ultimately cost him or her their jobs is clearly a spurious argument in this situation. (Eller (ICWU), Tr. 754)

In addition, no employer participant in this proceeding either gave concrete examples of past abuse of trade secrets by workers or representatives such as unions, or even suggested that there had been any pattern of past worker or worker representative abuse of trade secrets.

In view of the conflicting comments and testimony, the agency concluded that the final standard should clearly address how trade secret information would be handled. While it is likely that employers sometimes err on the side of caution and assert unwarranted trade secret claims, such as where reverse engineering could easily determine the chemical components of a product, or where professionals in an industry are fully familiar with "secret" process information that workers do not know, the agency believes on the basis of the record that raw exposure and medical records may at times reveal secret manufacturing processes and technology or secret percentages of a chemical in a mixture. This could occur not so much because the trade secret information is integrally tied to the identity and level of exposure to a chemical, but rather because process or mixture information was added to the total exposure file without an expectation that workers would gain access to the total file.

The agency believes also that the mere identity of a toxic chemical (which clearly would be revealed by an exposure record) might at times be a bona fide trade secret which workers do not already know. The NIOSH NOH Survey found that manufacturers asserted trade secret claims as to the chemical composition of approximately one third of the trade name products surveyed which contained OSHA regulated substances (NIOSH, Ex. 19, Chpt. III). It is likely that sophisticated chemical analytical techniques can often determine the identity of end product constituents, thereby ending trade secret protections, but this may not always be so (e.g., catalysts and intermediates). It is also conceivable that in rare situations the level of exposure to a toxic chemical, not its identity, could be a trade secret.

Having concluded that exposure and medical records may at times contain various forms of trade secret

information, the agency considered a variety of regulatory approaches. At the extremes, two options existed: (1) attempt to override all potential trade secret claims as in conflict with the purposes of this standard; and (2) give employers complete discretion to deny worker access to whatever information they perceive to be trade secrets. The agency rejected both of these approaches. As a legal matter (*See*, V.B, *infra*), and as a matter of sound public policy, the agency decided to accommodate legitimate employer trade secret claims, but only where the claims would not undermine the purposes of this rule. Workers have a fundamental need to know the identity, extent, and health consequences of exposure to toxic substances and harmful physical agents, regardless of whether or not the information is a trade secret. The final rule is therefore founded in part on the judgment that, as a matter of public health policy, employers must not be permitted to deny worker access to this information which is needed for the purposes of detecting, treating, and preventing occupational disease. As a result, the agency declined suggestions that the standard provide employers with unchecked discretion to deny access to asserted trade secrets. This could in practice render this rule virtually useless, since recalcitrant employers could easily use trade secret claims as a pretext for denying access to records. Access to records would then result only after protracted and complex administrative litigation demonstrated that a particular trade secret claim was not legitimate.

In striking a balance between preserving trade secrets and guaranteeing worker access to information, the agency considered the various employer suggestions that did not give employers unilateral discretion to deny access to trade secrets. Suggestions were made to: (1) inform the worker's doctor of the trade secret, but not the worker (Batchelor (NAM), Tr. 408–09; MCA, Ex. 156, pp. 28–29); (2) permit employers to delete trade secrets and substitute common names (SOCMA, Ex. 2(163), p. 4; MCA, Ex. 2(125), pp. 8–9); (3) permit employers to delete proprietary information "which is not relevant to either the exposure of or the medical impact of the exposure on the individual" (Dow Corning Co., Ex. 2(176), p. 2); (4) inform employees of the hazards of a chemical but not its identity (SOCMA, Ex. 156, p. 28); (5) permit employers to summarize monitoring results so as to avoid disclosure of proprietary processes or chemical formulations (Minnesota Mining and Manufacturing Co., Ex. 2(129), p. 7); and, (6) expressly permit employers to condition access on the formation of binding pledges of confidentiality (Polaroid Corp., Ex. 2(187), p. 4).

The final standard adopted several of these suggestions. First, employers are explicitly given the option to delete "any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture." It is OSHA's judgment that worker access to this process or mixture information is not crucial to the effectuation of this standard's limited goals. Union representatives also expressed acceptance of the deletion of this kind of trade secret information (Wodka (OCAW), Tr. 709–10; Eller (ICWU), Tr. 754).

OSHA decided to provide employers an opportunity to delete this legitimate trade secret information even where the deletion could substantially impair evaluation of where and when exposure to a toxic substance or harmful physical agent occurred. The location from which samples were collected might, for instance, be identified on a record in terms of proximity to the technical name for a secret machine. In these situations, however, the employer must provide alternative information which the employee can meaningfully use to identify where and when exposure occurred. This alternative information must be in a form employees can understand in light of their knowledge of the way their workplaces are laid out and what steps are followed in manufacturing processes. In this fashion, exposure and medical records will have true meaning to workers while employers are given flexibility to minimize disclosure of trade secrets previously unknown to workers.

While the final standard attempts to avoid unnecessary disclosure of trade secrets, the agency has decided that access must be provided to information concerning "chemical or physical agent identities including chemical names, levels of exposure, and employee health status data." In the agency's judgment, the need for worker access and the benefits of direct worker access to these basic data are compelling. Workers must, in all cases, at least have a right to know exactly what they are exposed to on the job, what is the magnitude of this exposure, and what are the resulting adverse health effects. Upon careful consideration the agency has declined to accept suggestions that employers be permitted to filter, summarize, substitute for, or interpret this fundamental information, or limit access to a narrow class such as physicians. Further, in assuring access to the identities of toxic substances and harmful physical agents, the standard covers the chemical name as well as any trade names or common names used for a chemical substance or agent. Medical and toxicological literature is generally indexed only by the chemical name of a chemical; thus employers may not obscure the known identity of a chemical by substituting a 'common' or 'trade' name.

Although the final standard compels access to data which may at times be trade secrets, the agency has not neglected the potential consequences of this access. To prevent misuse of this information, the standard provides that "whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer." Polaroid Corporation endorsed the value of such agreements:

> Trade secret status and the right to judicial protection of it may be lost by an employer's failure to limit disclosure to employees with a need to know and to require a pledge of confidentiality as a condition of disclosure. See 2 Callman, *Unfair Competition* s53.3(d). Polaroid believes that the Proposed Rule should be amended to take this rule of law into account. In those cases where employees do have a need to know trade secret information contained in medical and exposure records, employers should be expressly permitted to require any employee to enter into a confidentiality agreement as a condition of obtaining access to it. (Ex. 2(187), p. 4)

Although a Manufacturing Chemists Association (MCA) representative questioned the value of these agreements (Schall, Tr. 410–11), it is clear that these agreements are widely used in industry (Schall (MCA), Tr. 410–11; Duncan (NAM), Tr. 2194; AFL–CIO, Ex. 152, p. 28). It is also clear that they can serve to establish judicially enforceable rights (Cavitch, Business Organizations s23.4.02(5)(1975)).

The agency is confident that simple pledges of confidentiality in the specific context of this standard can serve to prevent abuse of whatever limited trade secrets are made accessible. These simple written agreements are provided for in the standard because in this situation they are appropriate. Their inclusion, however, does not represent an agency determination that trade secrets should only be disclosed upon

the formation of such agreements; and there may be other regulatory contexts in which these kinds of agreements are neither practical nor appropriate.

There is no evidence in this record that workers or unions have previously abused trade secrets of which they were aware, and employers have not even suggested that abuses occur by these kinds of individuals. Written agreements will focus attention on the serious consequences that could result from abusing trade secrets. There is, of course, some chance that specific agreements will be violated by a few individuals, but this possibility appears no greater than the current potential for abuse of trade secrets already known by workers or management personnel. Written agreements, by manifesting expectations of continued secrecy, will also maximize the ability of a harmed employer to get meaningful injunctive and compensatory judicial relief against a competitor who unfairly attempts to utilize trade secrets.

As a final matter, it is appropriate to note that the main, if not sole, concern of some employers was with potential abuse of trade secrets by designated representatives, not by employees (Dupont Corp., Ex. 150, p. 12–13; Capitol Associated Industries, Inc., Ex. 2(123), pp. 1–5, 17–21; General Electric Co., Ex. 2(178), p. 2; Sheratt (Data General Corp.), Tr. 1991–94, 2001–03). Concern was expressed that an employee would name a competitor as a designated representative, thereby guaranteeing abuse. The final standard treats designated representatives in the same manner as employees; that is, they both may be subject to written pledges of confidentiality. Designated representatives as a class essentially stand in the shoes of employees. They are provided access in order to avoid the burdens of forcing employees to personally collect records that they intend to have reviewed by representatives of their choosing. There is no more likelihood that an employee will designate a competitor as a designated representative than that the employee will copy records and then deliver them to a competitor. It is OSHA's expectation that in the vast majority of situations an employee will designate a physician, union official, lawyer, family member, or independent professional to be a designated representative. In these cases there is no genuine likelihood of competitive abuse. Whatever abuse possibly arises can be protected against by means of written agreements not to abuse trade secrets.

G. OSHA Access to Medical Records and the Right of Privacy

The most significant issue posed by OSHA access to employee records concerns a potential clash with the right of privacy vis-a-vis employee medical records. As discussed in the Legal Authority section of the preamble (V.C, D, *infra*), employee medical records are protected against unjustified governmental intrusions by the United States Constitution. Employee medical records subject to this rule will sometimes contain the most intimate details concerning a person's life, e.g., disease experience, psychiatric disorders, venereal disease, abortion, alcohol or drug abuse, sexual preferences, family medical problems, etc. OSHA access to complete medical records was felt by numerous participants to raise two major problems. First, it was argued that indiscriminate examination and use of employee medical records poses the threat of misuse. Harmful medical information could be disseminated in a way that would adversely affect the employee, e.g., loss of employment or insurance opportunities, impairment of personal reputation, damage to family relationships, etc. Second, it was argued that governmental access to personal medical information threatens to destroy expectations of confidentiality and severely impair medical programs.

The following comment by Shell Oil Co. illustrates these concerns:

> OSHA states that it believes the benefits derived from employees and public access to these medical records outweighs the disadvantages and therefore proposes to overturn the confidential physician/patient relationship that has always existed. We believe OSHA's attempt to make suddenly public an historically confidential relationship is revolutionary and will harm the relationships that currently exist between physicians and patient-employees. Future interactions between physicians and patients will be damaged because it will become more difficult for physicians to obtain complete and correct medical histories and even more difficult to persuade employees to take medical examinations. The resulting difficulties will affect society and will likely lead to poorer medical care in the private as well as the public and industrial sectors. (Ex. 2(105), p. 7)

(*See also*, AOMA, Ex. 2(59); General Foods Corp., Ex. 2(99)).

As a result of these two potential problems, several participants opposed any form of OSHA access to employee medical records (Phipps Construction, Inc., Ex. 2(7); Gypsum Assn., Ex. 2(94); Terrence Reed, Ex. 167(9–1); Harold Ritchie, Ex. 167(9–2); Milwaukee Constr. Ind. Safety Council, Ex. 167(9–7), p. 1–2; General Telephone Co. of Indiana, Inc., Ex. 167(9–13); Union Electric Co., Ex. 167(9–19)). Numerous other participants argued that OSHA access to an employee's medical record should only occur through informed consent of the employee or pursuant to a court order (United Technologies Corp., Ex. 2(6); Olin Corp., Ex. 2(71); The Sherwin-Williams Co., Ex. 2(76); Mobay Chemical Corp., Ex. 2(97); Sangamo Capacitor Div., Ex. 2(100); AMA, Ex. 2(200), p. 3; Frances Mahon Deaconess Hospital, Ex. 167(9–4); Continental Oil Co., Ex. 167(9–10); Columbus Hospital, Ex. 167(9–11); Montana Hospital Assn., Ex. 167(9–16); Indianapolis Rubber Co., Ex. 167(9–20); Phillips Petroleum Co., Ex. 167(9–24); Hillenbrand Industries, Inc., Ex. 167(9–24)). Several participants focused their concern on OSHA access to personally identifiable medical information, as opposed to medical information *per se*. These participants argued that OSHA access should be conditioned on informed consent in cases where personally identifiable medical records were involved (Grumman Corp., Ex. 2(55); AMRA, Ex. 82, pp. 3–4; Dr. Hockwald (AOMA), Tr. 1530; Dr. Herrmann (Johnson & Johnson), Tr. 1831; Dr. Wolkonsky (AMOCO), Tr. 2253, 2259; Dr. Steen (AMA), Tr. 2395; Borg Warner Chemicals, Ex. 167(9–22), p. 2).

In contrast to the preceding comments, numerous other participants were supportive of unconsented OSHA access to employee medical records, provided that misuse of personally identifiable information was prevented. Recognition was given to the fact that the right of privacy is not absolute, but must often be balanced against competing interests (Weiner, Ex. 9A, pp. 8–9). As noted by the American Medical Association:

> The privileged nature of patient-physician communications is not absolute, however. Often the disclosure of such confidential information is at the patient's request or is otherwise in his or the public's best interests. There is a constant tension between confidentiality and accessibility. Legislators and regulators should be cognizant of this tension and provide for an appropriate balance between protection and disclosure. The AMA recognizes the need to retain and to provide appropriate access to pertinent data relating to the exposure and potential exposure of employees to toxic or other hazardous materials in the work place so that on-the-job risks may be assessed. However, the employee has a right to expect that information which has been collected, stored, and managed by others on his behalf will remain confidential except under limited and controlled circumstances. (Ex. 2(200), p. 2)

Chapter 7 of the Privacy Protection Study Commission's report focuses on the many competing societal interests which intrude on the medical-care

relationship, and recommends how to best accommodate valid interests at minimal risk to personal privacy (Ex. 101). The Commission explicitly struck the balance in favor of unconsented access to medical records for health research purposes (Ex. 101, pp. 305–10; *See also,* Belair (NCCHR), Tr. 1859, 1872–74)).

Other participants recognized the need for unconsented access for legitimate occupational safety and health purposes. As discussed earlier in the preamble (III.J, *supra*), the consent of employee medical records can be highly relevant to, and sometimes crucial to, OSHA efforts to further the goals of the Act. The life and death interest of workers in governmental efforts to guarantee safe and healthful working conditions is a substantial interest, and to the extent necessary should supersede individual privacy concerns (Dr. Wegman, Tr. 234–35; Dr. Whorton, Ex. 11, pp. 17–18, Tr. 289; Fanning (HEW), Ex. 126, pp. 16–17).

There was universal agreement that OSHA access should be accompanied by stringent internal agency procedures to preclude abuse of personally identifiable medical information. Provided these procedures were established, many participants, including all union and employee participants, endorsed unconsented OSHA access to employee medical records for occupational safety and health purposes (Dr. Wegman, Ex. 10, p. 13, Tr. 208; Dr. Young, Tr. 1111; Dr. Parkinson, Tr. 1142–44; Dr. Silverstein (UAW), Ex. 63, p. 9; Annas, Tr. 1752–56; Weiner, Ex. 9A, pp. 4–6, 40–46; AFL–CIO, Ex. 152, pp. 56–61, Ex. 39, p. Tr. 644–45; Samuels (AFL–CIO IUD), Ex. 36, pp. 2–3; USWA, Ex. 160, p. 10; Wilson (USWA), Tr. 684–85; Becker (USWA), Tr. 2390; OCAW, Ex. 2(124), Tr. 698; ICWU, Ex. 28, pp. 10–12, Ex. 106, p. 1; Spatz (Cement, Lime and Gypsum Workers), Tr. 1206–07; Howe (CACOSH), Tr. 1094–95; HRG, Ex. 2(161), p. 3; NIOSH, Ex. 16, p. 3). The attitude of those participants in favor of OSHA access was expressed by Dr. Silverstein of the UAW:

> The third piece, access by government agencies, has justifiably raised the most concern and controversy. At first glance, the issue is simple. The protection of the public welfare may legitimately supersede the normally protected individual right to privacy. There is so much legal and public health precedent for this that the rights of OSHA and NIOSH in this area might almost go without question. However, a more careful look reveals that this issue is actually quite complex and must be approached with the care of an appraiser viewing a precious diamond: Unless each facet is studied and evaluated we cannot be sure we are being sold an attractive replica of little ultimate value. (Ex. 63, p. 4)
>
> It is sometimes necessary and appropriate that sizeable amounts of information from medical files, with personal identifying information, be made available to enable epidemiologic investigation which may be of enormous benefit to large numbers of people. It is not always practical or possible to get individual permission for the release of this information. It is our belief that allowance should be made to permit such release to agencies which are charged with the responsibility to protect the public health. For this reason we support section (d)(3) of the rule which allows OSHA and NIOSH these records. We are not insensitive, however, to the fact that there has been an alarming and largely unregulated growth of data banks in recent years by government and various private agencies (notably insurance companies and credit agencies). The potential for abuse is high and we are not so naive to place blind trust in NIOSH and OSHA to use the medical reports wisely in all instances. The proposed rule is incomplete as long as it permits broad disclosure to NIOSH and OSHA without an accompanying regulatory framework which defines and limits the use of this information. (Ex. 63, p. 9)

Having considered the record, and analyzed the legal issues involved (V.A, C, D, *infra*), the agency decided to include a requirement in the final standard providing for unconsented OSHA access to employee medical records. As recognized by numerous participants, acquiring consent is not always a realistic possibility. Large numbers of people may be involved, emergency situations may not permit delay, the residence of terminated employees may be unknown, or an absence of consent may decrease the statistical validity of a study (Privacy Commission, Ex. 101, p. 309; Belair (NCCHR), Tr. 1859, Ex. 58, p. 46; Fanning (HEW) Ex. 126; Weiner, Ex. 9A, pp. 43–44; NIOSH, Ex. 16, p. 3; AFL–CIO, Ex. 152, p. 58; HRG, Ex. 2(161), Attach.). The time and expense involved in soliciting and waiting for consent by numerous employees is also a formidable impediment for a public health agency like OSHA with limited resources.

Even though OSHA has legal authority to seek unconsented access to identifiable medical records, the agency concluded that this authority should, as a matter of law and sound public policy, be exercised with great care. To protect the employees' privacy interests, OSHA recognizes the need for stringent internal procedures to: (1) limit the circumstances in which identifiable medical records are examined or obtained by OSHA personnel, and (2) control use of identifiable medical information once in the agency's possession. In order to effectuate these decisions, the agency is today simultaneously promulgating detailed procedural regulations governing all aspects of OSHA examination and use of personally identifiable medical records (29 CFR 1913.10). As suggested by numerous participants, these internal administrative requirements are being promulgated as a rule rather than as internal guidelines in order to give them the permanence and status accorded to published regulations (*See,* 44 FR 3995 (Jan. 19, 1979); Dr. Hockwald (AOMA), Tr. 1532; Swanson (API), Tr. 2063; Shell Oil Co., Ex. 167(9–28), p. 4; Phillips Petroleum Co., Ex. 167(9–23), p. 2; Rubber Mfgrs. Assn., Ex. 164, p. 2; Dr. Herrmann (Johnson & Johnson), Tr. 1833; UAW, Ex. 63. p. 10; AFL–CIO, Ex. 152, p. 61).

Several key considerations influenced OSHA's decision to provide for unconsented agency access to identifiable medical records. The agency foresees a need to seek access on occasion to personally identificable medical records. The administrative regulations are structured around the principle that personally identifiable information is not to be collected unless there is a clear need to do so. Many purposes for OSHA access can be satisfied without any access to personal identifers, but this will not always be so. Some purposes for OSHA access involve limited on-site review of medical records such as biological monitoring results to detect instances of occupational health problems. Once specific instances of problems are discovered, OSHA would investigate conditions in the workplace to discover causes of the problems, and then ensure that protective measures are provided to the employees involved. These kinds of inquiries necessarily involve personally identifiable information, as would Section 11(c) discrimination investigations and other inquiries directed to the problems of specific employees. OSHA anticipates that access to employee medical records will generally involve limited on-site review, with minimal personally identifiable information being recorded and taken off-site. Access can be accomplished at minimal burden to all concerned by access to the relevant portions of identifiable records. Due to the variety of reasons for OSHA access, and the practicalities involved, OSHA concluded that the final standard could not reasonably require OSHA to obtain employee consent in order to gain access to personally identifiable medical information.

The final standard provides for such OSHA access to personally identifiable medical records without requiring

individual employee consent. In so doing, OSHA agrees with the personal comments of John Fanning of HEW's Office of Health Policy, Research, and Statistics, to the effect that strong public health considerations must weigh heavily when balanced against the privacy interest in precluding unconsented access:

> My basic principle would be that the health of people and the prevention of suffering caused by ill health are very important values, that they are more important than the privacy interests normally involved in records needed for health research. I don't think I have to outline here the contributions of epidemiological research, to the preservation of health and the relief of suffering. Through the use of records, science has come to important conclusions about the causation of illness and the effects of various therapies. Through this knowledge, we've been able to in many instances interrupt this causation by quarantine measures, by the prevention of the use of toxic substances, by warnings in education programs. In other instances, helpful therapies have been confirmed in their use and harmful therapies have been stopped or limited. Much of this research requires the use of records that are identifiable to the individual and that are compiled for other purposes. And it is typically needed, without the consent of the individual. In most instances, consent is impracticable and will spoil the research. (Ex. 126, pp. 16–17)

> When the rather minor intrusion involved in the use of records in epidemiological research is balanced against the possibility of reducing disease and suffering for future generations, it seems difficult to justify a policy that will prohibit or seriously restrict the use of the record. The individuals whose records are used can be seen as having an obligation to the wider society to contribute to the elucidation of the causes, course and treatment of illness. . . .
>
> The possibility of learning something significant about illness is of such importance to the wellbeing of future generations and even in some instances the individuals involved in present generations, is of such importance that it surely justifies access by researchers when this is done in a way that does not interfere with the present wellbeing of the subjects. Unnecessary constraints on research in the name of privacy represent a balancing which gives privacy an obstructive position in human affairs, rather than a liberating position, which it ought to have. Illnesses are dehumanizing to its victims and the insignificant invasions of privacy attendant to research uses of records truly do not reach the level of dehumanizing those individuals that illness does for its victims. (Ex 126, pp. 17–18)

The preceding comments, though directed to epidemiological research, apply equally to other OSHA needs for access, where information contained in employee medical records is being directly utilized to ensure safe and healthful working conditions for employees.

The final standard and its accompanying procedural regulations are of necessity flexible as to when the agency will seek unconsented access to personally identifiable medical information. A very firm regulatory structure is established, however, to preclude abuse of any personal information obtained. Access is narrowly focused to only that information needed to accomplish the reason for access, and approval must be obtained from top OSHA officials. Notice of access by means of posting and in some cases by individual notice is afforded to employees. Direct personal identifiers may not be obtained unless needed, and are to be removed and maintained separately from the medical record once in the agency's possession. Use, security, and inter-agency and public disclosure of medical records are strictly controlled. This combination of procedures established by OSHA tracks many of the recommendations made by participants in the rulemaking and by organizations who have studied medical record privacy issues.

OSHA is confident that the protections established will avoid impermissible interference with the right of privacy, while at the same time enable medical record information to play a constructive role in preventing occupational injury and disease. All aspects of the procedural regulations are discussed in a separate **Federal Register** notice issued today. No evidence was entered into the record of past OSHA abuses of employee medical records (*See,* Wodka (OCAW), Tr. 698; Samuels (AFL–CIO IUD), Ex. 36, pp. 2–3), nor did any participant in this proceeding even suggest that there had been instances of abuse by OSHA. The procedural regulations adopted will build on this foundation. In addition, several participants firmly rejected suggestions that well-controlled OSHA access to medical records would undermine corporate medical programs.

Virtually every corporate witness who testified claimed that access by government agencies without consent would interfere with the heretofore confidential doctor/patient relationship and destroy the basis of trust in that relationship. While expressed corporate concern over patient's welfare was great, not one worker or worker representative voiced the opinion that government access would undermine the workers' relationship with the company physician. On the contrary, the testimony of every worker and worker representative clearly and strongly supported OSHA and NIOSH access to individual records without consent.AFL–CIO, Ex. 152, (*See also,* Wilson (USWA), Tr. 684–5; Bergs (USWA), Tr. 1127–8; Tutrow (USWA), Tr. 1130; Gaffney (UAW), Tr. 1324–5; LOHP Panel, Tr. 1706–09).

H. Non-medical Corporate Access to Employee Medical Records

As discussed in the preamble (IV.D, *supra*), workers have little genuine expectation of true confidentiality as to employment medical records. A variety of standard practices tend to undermine the ability of the physcian-patient relationship in industry to be based on mutual trust or the maintenance of confidentiality. Workers are often required to submit to pre-employment physicals and other examinations as a condition of employment with no choice as to the physician who conducts these exams. Company physicians commonly testify without the consent of the employee (and often favorably to the employer's interests) in arbitration and workers' compensation cases. Workers have often been required to sign releases for the blanket disclosure of medical information to employers in order to qualify for various benefits. And typically, employees must authorize the release of all medical information to an insurance company to assure the payment of claims, with the insurance company in turn releasing the records to the employer's accounting or benefits department.

In addition, the rulemaking record contains substantial evidence that non-medical management personnel often have access to employee medical records beyond what is considered ethically permissible by the occupational medical profession. Although the AOMA Code of Ethical Conduct provides that ". . . employers are entitled to counsel about the medical fitness of an individual in relation to work but are not entitled to diagnoses or details of a specific nature" (Ex. 2(59)), the record indicates that management access to the contents of employee medical records is often much more extensive (Weiner, Ex. 9A, pp. 34–35, Tr. 177–78, 180; Dr. Whorton, Ex. 11, pp. 6–8, Tr. 271–3; Taylor (AFL–CIO IUD), Ex. 39, pp. 5–6, Tr. 640–3; Samuels (AFL–CIO), Ex. 35 (Attach.), Tr. 949–53, 961–2, 964–5, Ex. 93A, Ex. 93H, pp. 14–16; ICWU, Ex. 28, pp. 1, 10–12, App.; Eller (ICWU), Tr. 727–9, 738–40, 747–8, 759–61; Dr. Silverstein (UAW), Ex. 63, pp. 3–6, 7, Tr. 2020–22, Ex. 165, pp. 2–3; NCCHR, Ex. 58, pp. 30, 32–3; HRG, Ex. 161d, p. 7; AFL–CIO, Ex. 152, pp. 7–8, 19–22; USWA, Ex. 160, pp. 4–7; Wilson (USWA), Tr. 678–9, 687–8; Wodka (OCAW), Tr. 703–05; McDougall (IBT), Tr. 915; Howe (CACOSH), Tr. 1093–4, 1096, 1102–04; Dr. Young (CACOSH), Tr. 1098–9; Becker

(USWA), Tr. 2381–2, 2384, 2387; Toland (PHILAPOSH), Tr. 884–5; Mattillion (UAW), Tr. 1319; Fenn (OCAW), Tr. 1362). The following testimony is representative:

I will say for the record that there is absolutely no privacy in our workplace on medical records. Anyone can get, any member of management can get access to the records any day of the week, any hour of the day. It's as easy as picking up any phone and calling the medical department or the doctor and asking any question you want and getting the information. (Howe (CACOSH), Tr. 1096)

* * * * *

But as far as the lack of confidentiality of records, yes, I can attest to that. I have been in medical, you know investigating an incident or whatever, trying to talk to the company doctor. A member of labor relations would come down and just, you know, hi, doc, and then go through the records, the medical records, and pull a particular individual's medical record and without even consulting the doctor first or a nurse or anybody as far as that goes, just directly [go] to the cabinet and pull an individual's record. I know it happens with personnel and I know it happens with different individuals in management during the course of a grievance procedure, you know, in regard to promotion or something, to see if a man has any kind of physical handicap. They will just go directly down and pull the file themselves. So there is no confidentiality. (Mattillion (UAW), Tr. 1319)

* * * * *

But when we talk about the small companies, the small chemical company with 40 or 50 employees or 25 or 30 employees, they normally employ either a doctor locally or a clinic in the nearby area that works for half a dozen or 25, maybe as many as 200 companies. And there the right of privacy, which we continue to hear companies talk about, protecting the physician-patient relationship, evidently has a real tendency to go astray, because the man is sent there for a physical, the physical comes back, the company secretary or receptionist who opens the mail, she scans it first. Then the office manager scans it. Then from the office manager it usually goes to the general foreman and it may [go] further away from him [or] it may stay confidential; it may go just to the company benefit person or it is mailed downtown to Toledo or Philadelphia, wherever their main headquarters and they are sent there for the benefit people. So a lot of people have access to his medical records except him. So I think that the part of the saying that it is just a matter of relationship between the patient or the employee and the doctor is so sacred in this case I wonder how all those other people got into the sacred act. (Fenn (OCAW), Tr. 1362)

* * * * *

The examples are great in number, and I will just give you one from my own experience that is an illustration, I think, that is representative. I had the opportunity to tour a plant where we represent members a number of months ago because of some health problems that our members were experiencing and during the course of this investigation, I spoke with the company physician at that plant and I asked at that time about the measures taken in the plant to protect the privacy of the individual employees and to preserve the medical records and the physician told me that the records were kept in a locked file cabinet and that they were available only to that physician alone and to nobody else and that the physician was assured that, because of the way the records were maintained, that there were no current abuses.

However, the physician described to me what had happened when he initially took employment with that company and said that during the first weeks of his employment there he was approached on a number of occasions by industrial relations personnel, by foremen, by supervisors and a variety of others, asking to see medical files and he said to these people, no, I can't show you those. These are private medical records and I keep them confidential. And he was told, look, you don't understand. We've had these records available to us for years. You just don't understand. You've been hired by the company; you're part of the team now, and this is the way we handle this kind of information.

Well, it required an apparently sizable struggle on the part of the physician to gain control of those records and to protect them from abuse, but these abuses did exist in that plant for a number of years and I am convinced that they continue to exist, uncontrolled, in a large number of institutions. (Dr. Silverstein (UAW), Tr. 2021–22)

On the basis of the record, the agency is convinced that significant abuses of employee medical records occur. Several participants urged that the final rule contain provisions to limit corporate access to employee medical records. The UAW recommended that:

(1) All employee medical records as defined in this rule should be required to be kept in locked files under the direct control of medical professional personnel.

(2) A written log should be maintained which would document all movement of material into and out of these files. This would include signed accounts of all releases and subsequent circulation of material from the files. (Ex. 165, pp. 2–3)

The AFL–CIO similarly recommended a provision requiring that "Medical records shall be maintained in a secure fashion, separate from other non-confidential records so as to prevent access by non-authorized individuals" (Ex. 152, pp. 7–8, 19–22, 45–47, 53–54, A2). The USWA recommended more detailed provisions including the following elements: (1) retention of employee medical records under the exclusive control of a physician; (2) unrestricted employer access to opinions and recommendations of the physician, but employer access to specific diagnoses or details only with the written consent of the employee; (3) access by non-governmental researchers to medical records for epidemiological purposes only with the consent of the union; and (4) retention of a log for each medical record detailing the circumstances of releases of medical information (Ex. 160, pp. 4–7, 10–15).

Although the preceding recommendations are straightforward methods of minimizing corporate abuse of employee medical records, the final standard does not address this issue. The proposed rule was silent on the question of corporate access to employee medical records, and OSHA's opening statement to the rulemaking hearings stated that:

[T]he proposal does not limit to whom the employer may discretionarily disclose exposure and medical records. In particular, it is silent on the extent to which non-medical management employees or officers can rightfully gain access to, use, or disclose to third parties (such as insurers, health researches, or other employers) information that has been collected by the company's medical department.

. . . [O]ur silence on these broad questions of corporate medical and recordkeeping practices and privacy policies should not be construed as OSHA assent. Rather, it serves only to underscore the relative modesty of the current proposal. These broader issues not being issues in the current proceeding except insofar as they are relevant to issues which are raised, we leave them to future legislation or regulation, as appropriate. (Wrenn, Ex. 7, pp. 17–19)

In addition, since the issuance of the proposal, the Department of Labor has conducted extensive hearings on the whole question of employee privacy rights within the corporation, including the privacy of medical information (44 FR 57537 (Oct. 5, 1979)). In view of OSHA's initial expressed intention not to regulate corporate access to employee medical records as part of this rulemaking, and the overall Departmental initiative to address these questions, the agency has declined to promulgate final requirements at this time. The record has, however, convinced the agency that a serious problem exists, and consideration will be given to appropriate agency responses. The lack of provisions in the final rule concerning this topic should not be viewed either as implicit criticism of the specific recommendations made by various participants, or as an agency concession that the problem does not merit a response.

V. Legal Authority Issues

A. Statutory Authority for Access to Records

The Occupational Safety and Health Act provides ample legal authority for employee, designated representative

and OSHA access to medical and exposure records. The Act created an expert administrative agency with broad regulatory powers to fashion protective regulations concerning occupational injury and disease and to tailor administrative procedures in informal rulemakings to the needs of efficient regulatory actions. This final rule substantially advances the central purpose of the Act articulated in Section 2(b)—"to assure so far as possible every working man and woman in the Nation safe and healthful working conditions" (29 U.S.C. 651). This standard furthermore flows directly from, and is fully consistent with, the Act's express language.

By this rule, OSHA has adopted a generic approach to remedying the problems of access to exposure and medical records. Sections 6(b), 3(8), 2(b)(3) and (9), 8(c)(1), and 8(g)(2) provide for the promulgation of such occupational safety and health standards which the Secretary deems necessary to carry out his responsibilities. The Secretary believes that the generic approach to rulemaking is a necessary and reasonable approach to regulating occupational health problems which are universal to a wide array of toxic substance exposures and industrial settings in view of the large number of such substances and settings and the weaknesses of the substance-by-substance approach. OSHA therefore explicitly rejects contentions that have been made by some in industry that the Act limits the Secretary to substance-by-substance rulemaking.

Access to records will yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease (III, *supra*), thereby advancing the remedial purposes of the Act. Access to vital exposure and medical information is an innovative method of promoting occupational health consistent with the Congressional directive in Section 2(b)(5) that healthful working conditions be provided "by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems" (29 U.S.C. 651(5)). Access to exposure and medical information will advance the Congressional goal in Section 2(b)(1) of:

> [E]ncouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions. (29 U.S.C. 651(1))

Access also furthers the section 2(b)(6) goals of "exploring ways to discover latent diseases, (and) establishing causal connections between diseases and work in environmental conditions . . ." (29 U.S.C. 651(6)). As such, this rule squarely falls within the definition of 'occupational safety and health standard,' which is defined by Section 3(8) as:

> [A] standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment. (29 U.S.C. 652(8))

Because this rule comes within the terms of Section 3(8), Section 6(b) (29 U.S.C. 654(b)) authorizes the Secretary to issue it in accordance with the procedures prescribed in that section.

This application of 6(b) is a means of strengthening and broadening the participation of employees and their representatives in occupational health matters. The Senate Committee on Labor and Public Welfare, in recommending passage of the Senate version of the Act, placed great importance on this participation:

> It has been made clear to the committee that the most successful plant safety programs are those which emphasize employee participation in their formation and administration; every effort should therefore be made to maximize such participation throughout industry (Sen. Comm. on Labor and Public Welfare, *Legislative History of the Occupational Safety and Health Act of 1970* ("Legislative History"), 92d Cong., 1st Sess. 150 (Comm. Print 1971))

The House Committee on Education and Labor, in its report recommending passage of the House bill, attached comparable importance to employee awareness of hazards:

> Basically, the worker needs to have adequate advance knowledge of hazards in order to protect himself from damaging exposures. . . . Since inadvertent exposure to unknown products or processes often causes severe and immediate reactions, the exposed worker must know what type of exposure he has suffered in order to use proper treatment. The worker especially needs this information in cases of toxic substances which have delayed or latent ill effects. (Legislative History at 859)

This final occupational safety and health standard gives meaning to these Congessional findings.

Employee and designated representative access to records directly builds upon several express provisions of sections 6(b) and 8(c). Section 6(b)(5) (29 U.S.C. 655(b)(5)) provides that "the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard, which most adequately assures, to the extent feasible, on the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life." This standard is viewed as necessary and appropriate to protecting employees from material impairment as a result of exposure to toxic substances and harmful physical agents, including with respect to those substances and agents which have not otherwise been the subjects of specific occupational safety and health standards. This standard therefore will contribute significantly to achieving the statutory goal stated in section 6(b)(5), as well as aid employees in the fulfillment of other rights under the Act.

In addition, Section 8(c)(3) (29 U.S.C. 657(c)(3)) provides that when a toxic substance is being regulated comprehensively pursuant to section 6(b), exposure monitoring where appropriate shall be conducted by the employer, and employees and their representatives shall be afforded access to the resulting records. Section 6(b)(7) further provides in this context that employees shall be apprised of all hazards to which they are exposed, and that medical examinations where appropriate shall be afforded to employees. Access to the results of these medical examinations must be provided to an employee's physician upon request. These provisions contemplate basic requirements to be included in each standard regulating a toxic substance, and, contrary to the narrow interpretation offered by several industry participants, should not be viewed as imposing substantive limitations on OSHA's authority to issue general rules effectuating all the purposes of the Act.

As has been stated, it is the agency's judgment, based on a decade's experience, that a substance-by-substance implementation of sections 6(b)(5), 6(b)(7) and 8(c)(3) is impractical due to the large number of unregulated toxic substances and the long periods necessary to conduct thorough rulemaking proceedings on each substance (*See*, 45 FR 5011–15 (Jan. 22, 1980)). Section 6(b), however, is flexible, and authorizes broad OSHA discretion in the format and content of each occupational safety and health standard. The many benefits of worker and designated representative access to exposure and medical information can be achieved even before all toxic substances and harmful physical agents are fully regulated. Congress intended

that OSHA have broad flexibility in mandating protective measures and setting regulatory priorities. OSHA's judgment that all workers at risk should have access to available information now as opposed to in the indefinite and possibly distant future is well within the scope of the flexibility Congress afforded.

The Occupational Safety and Health Act also contains ample legal authority for providing OSHA with its own access to employee exposure and medical records. Section III.J of the preamble, *supra*, discusses the variety of agency investigatory, rulemaking, and other functions which can depend on access to employee exposure and medical records. The statutory provision which principally authorizes OSHA access to these records is Section 8(c)(1) of the Act [29 U.S.C. 657(c)(1)], which states:

> Each employer shall make, keep and preserve, and make available to the Secretary * * * such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses.

By its terms, Section 8(c)(1) applies to employer activities "relating to this Act" and not just to records required pursuant to Section 6 of the Act, as is provided by section 8(c)(3). The phrase "relating to this Act" must be liberally interpreted in light of the broad remedial purposes of the Act to extend to all employer records which are determined to be "necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and diseases."

The employee exposure and medical records addressed by the final rule clearly come within this scope of section 8(c)(1). As stated by the House Committee on Eudcation and Labor in discussing recordkeeping and agency investigatory powers of the House bill:

> Adequate information is the precondition for responsive administration of practically all sections of this bill. (Legislative History at 860)
>
> Since the Federal Government is moving for the first time into an area of broad national responsibility, corresponding authority must be delegated to the Secretary in order that he may carry out this responsibility. (Legislative History at 852)

The amended Senate bill adopted the broad "relating to * * *" phrase found in the Act even though earlier versions of various bills applied the recordkeeping requirements only to records "concerning the requirements of the Act" (Legislative History at 13, 93, 736). Congress, therefore, opted for the broadest possible application of section 8(c)(1). *Marshall* v. *American Olean Tile Co.*, —— F. Supp. —— (E.D. Pa., No. 79-597) (p. 4 n. 3, sl. op.; Feb. 29, 1980).

Legal authority for OSHA access to exposure and medical records also arises from section 8(a)(2) [29 U.S.C. 657(a)(2)], which authorizes inspections and investigations of, among other things, employer "materials"; from Section 8(b) [29 U.S.C. 657(b)], authorizing the agency to require "the production of evidence under oath" (which both the House and Senate committees stated to include books and records (Legislative History at 152, 171, 852)); and from section 8(g)(1) [29 U.S.C. 657(g)(1)], which authorizes the compilation, analysis, and publishing of information obtained under Section 8.

The final standard is also authorized by section 8(g)(2) of the Act [29 U.S.C. 657(g)(2)]. Section 8(g)(2) empowers the Secretary to "prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under this Act." In light of the remedial and ambitious nature of the Act, this general rulemaking section necessarily applies to all statutory responsiblities, and supplements specific grants of authority found elsewhere in the statute. In discerning the scope of its statutory responsibilities, OSHA looks to the entire Act, and not just to ss6 and 8. A more narrow application of s8(g)(2) would mean that its function was purely ornamental. Since there is nothing in the legislative history indicating that its inclusion in the enacted bill was meant to be more limiting than the overall statutory purposes, s8(g)(2)'s applicability must be commensurate with the agency's overriding responsibility of assuring healthful working conditions for every working man and woman(s2(b) of the Act).

Thus section 8(g)(2) also establishes legal authority for this rule, particularly because at least six important statutory provisions are substantially advanced by employee and designated representative access to medical and exposure records. These six provisions relate to employee rights under the Act—rights which OSHA has a responsibility to effectuate and preserve, especially since, as the Supreme Court has recently recognized, "OSHA inspectors cannot be present around the clock in every workplace." *Whirlpool Corp.* v. *Marshall*, —— U.S. ——, 100 S. Ct. 883 (1980), *at* p. 891.

Access to information is first of all crucial to the effectiveness of the section 8(f)(1) right of employees and their representatives [29 U.S.C. 657(f)(1)] to complain to OSHA concerning perceived safety and health problems and obtain a prompt inspection of the worksite at issue. The importance of this complaint procedure can be seen by the fact that, of 57,937 total FY 1979 (Oct. 1, 1978–Sept. 30, 1979) OSHA inspections throughout the country, approximately 22 percent were initiated by complaints from employees or their representatives (Ex. 175). Approximately 34 percent of these worker complaints concerned health issues (Ex. 175). Responding to worker complaints thus consumes a large portion of OSHA's inspection resources. Agency experience has demonstrated that the complaint mechanism is one of the most important means by which occupational health problems are brought to OSHA's attention for investigation and enforcement solutions. Worker access to records will significantly increase the impact of complaint inspections, since workers will be able to be more specific about the nature of their exposures, the job locations of greatest exposure, and any resulting health problems. Knowing this information in advance of an investigation will enable OSHA to respond immediately to severe problems, to better prepare itself for inspections, and to assure that the correct personnel and equipment are sent to investigate the problems complained of.

The second vital employee statutory right affected by this rule is the section 8(e) right of employees and their representatives to accompany OSHA during plant inspections [29 U.S.C. 657(e)]. This walkaround right helps OSHA identify where and how various toxic substances are used, which plant operations generate the greatest exposures, and in other ways helps OSHA conduct a thorough and effective inspection. The Senate Committee on Labor and Public Welfare, in reporting the Senate version of the Act, attached great importance to this right:

> During the field hearings held by the Subcommittee on Labor, the complaint was repeatedly voiced that under existing safety and health legislation, employees are generally not advised of the content and results of a Federal or State inspection. Indeed, they are often not even aware of the inspector's presence and are thereby deprived of an opportunity to inform him of alleged hazards. Much potential benefit of an inspection is therefore never realized, and workers tend to be cynical regarding the thoroughness and efficacy of such inspections. Consequently, in order to aid in the inspection and provide an appropriate degree of involvement of employees themselves in the physical inspections of their own places of employment, the

committee has concluded that an authorized representative of employees should be given an opportunity to accompany the person who is making the physical inspection of a place of employment * * * (Legislative History at 151)

Agency experience has demonstrated that, to the extent workers are aware of the hazards they face, they share this information with OSHA, and are valuable aides in the agency's efforts to maximize the effectiveness of our compliance resources. Worker access to medical and exposure records will make more meaningful the exercise of an important statutory right, and will also directly improve the quality of OSHA plant inspections.

Two other important statutory rights of employees are their section 10(c) rights to contest the reasonableness of abatement periods proposed by OSHA, and to participate as parties in Occupational Safety and Health Review Commission adjudicatory proceedings (29 U.S.C. 659(c)). Congress thus created a clear statutory framework by which workers could contribute to the just resolution of disputes over OSHA enforcement cases. Workers and their representatives have in recent years increasingly invoked these participatory rights. Our experience in Review Commission proceedings has been that worker participation often substantially affects the outcome of adjudications and can assist the Secretary in the exercise of his enforcement responsibilities. (*See, Kaiser Aluminum & Chemical Corp.*, 1978 CCH OSHD Para. 23,200; *Brown & Root*, 1978 CCH OSHD Para. 23,731; *United Parcel Services*, 1979 CCH OSHD Para. 23,837). As with other rights under the Act, however, the effectiveness with which workers invoke section 10(c) rights depends largely on the extent of their knowledge of the health hazards addressed by enforcement proceedings. Access to medical and exposure records will enable workers to decide more rationally whether to use section 10(c) rights. And, once workers have decided to participate, access to records will improve the quality of their participation.

A fifth statutory right enhanced by worker access to records is the section 20(a)(6) right of workers to request a workplace Health Hazard Evaluation (HHE) by NIOSH (29 U.S.C. 669(a)(6)). HHE's are performed by NIOSH to identify the nature and magnitude of existing workplace health hazards (Bierbaum (NIOSH), Tr. 480–83, 487; Ex. 20). NIOSH perceives its HHE program as a crucial means of discovering occupational disease—so much so that NIOSH is refocusing its resources in an attempt to triple the number of HHE's it conducts in 1980 over the number performed in 1979 (Testimony by NIOSH Director Anthony Robbins on September 20, 1979, before the National Advisory Committee on Occupational Safety and Health, Ex. 175, p. 9). Philip Bierbaum of NIOSH testified that approximately 60 to 70 percent of requests for HHE's come from workers or their representatives (Tr. 481). Worker access to medical and exposure records will thus increase the value of HHE's in two ways. First, access will enable workers to better detect health problems and seek the benefits of NIOSH's help. And second, access will enable employees to provide NIOSH with information on the potential magnitude of the health problems involved, so NIOSH can set priorities for its limited HHE resources.

Lastly, worker access to medical and exposure records will maximize the impact of employee training and education provided by OSHA pursuant to section 21(c) of the Act (29 U.S.C. 670(c)). OSHA realizes that it alone cannot solve occupational safety and health problems. Occupational disease is a societal problem and effective solutions require the combined efforts of employees, employers, government, the educational community and the technical community. Knowledge concerning the causes, nature, and prevention of disease is required, as well as the technical resources to effect solutions in practice. The House Committee on Education and Labor, in its favorable report of the House bill, emphasized these realities:

> American industry cannot be made safe and healthful solely by enacting a Federal law which emphasized punishment. (Legislative History at 856)
>
> The Committee judges that one of the key contributions Government can make to the occupational safety movement is through education by the dissemination of safety information and by the training of employers and employees * * *
>
> The Committee recognizes that a substantial increase in manpower with professional competence is needed to bring about a successful program. To remedy this situation, certain provisions in the bill are designed to expand significantly the number of properly trained personnel to work in the field of occupational safety and health * * *
>
> Special emphasis is to be placed on technical assistance to both labor and management for the adoption of sound safety and health practices. (Legislative History at 861)

The Committee Report of the Senate Committee on Labor and Public Welfare attached equal significance to education and training (Legislative History at 161).

To implement section 21(c) of the Act, OSHA has established a major program, its "New Directions Grant Program," which provides funds to labor unions, nonprofit trade associations, educational institutions, and other groups for the purposes of training, education, and acquisition of technical resources (Ex. 173). The New Directions Grant program is substantially improving worker knowledge of the causes and prevention of occupational disease, and is broadening the availability of technical resources to both union and non-union employees. Worker access to exposure and medical records is crucial so that workers can take full advantage of the knowledge and technical resources being made available by the New Directions Grant program.

The statutory authority for employee and designated representative access to medical and exposure records therefore arises from numerous provisions of the Act. The remedial purposes of the Act dictate that this statutory language be broadly applied. Recent court decisions have emphasized that the Act is a remedial statute, which requires a liberal construction and broad deference to the Secretary's definition of statutory authority. In *Whirlpool Corp.* v. *Marshall*, —— U.S. ——, 100 S. Ct. 883 (1980), the Supreme Court unanimously held (pp. 890–91):

> The (OSH) Act, in its preamble declares that its purpose and policy is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to *preserve* our human resource . . ." 29 U.S.C. 7651(b) (Court's emphasis).
>
> To accomplish this basic purpose, the legislation's remedial orientation is prophylactic in nature. See *Atlas Roofing Co.* v. *Occupational Safety Commission*, 430 U.S. 442, 444–445. The Act does not wait for an employee to die or become injured. It authorizes the promulgation of health and safety standards and the issuance of citations in the hope that these will act to prevent deaths or injuries from ever occurring . . . . In the absence of some contrary indication in the legal history, the Secretary's regulation must, therefore, be upheld, particularly when it is remembered that safety legislation is to be liberally construed to effectuate the congressional purpose. *United States* v. *Bacto-Unidisk*, 394 U.S. 784, 798; *Lilly* v. *Grand Truck R. Co.*, 317 U.S. 481, 486.

Finding the requisite authority in ss8(g)(2) and 5(a)(1) (the "general duty clause"), the Court upheld OSHA's regulation protecting workers against discriminatory action if they refuse to work in the face of a perceived imminent danger.

Decisions upholding OSHA's authority to require "upstream" labeling of toxic substances, *American*

Petroleum Institute v. *OSHA*, 581 F.2d 493 (5th Cir. 1978), *cert. granted* with respect to a different issue, 440 U.S. 906 (1979), and walkaround pay for employees during inspections, *Chamber of Commerce* v. *OSHA*, No. 77–1842 (D.C.D.C. 1978), *appeal pending* C.A.D.C., have also expressly noted that the remedial nature of the Act warrants a liberal interpretation of the authority granted to carry out its purposes. In upholding the labeling requirement, the *American Petroleum Institute* Court approvingly quoted a prior Ninth Circuit statement that "Congress clearly intended to require employers to eliminate all foreseeable and preventable hazards" (581 F.2d *at* 509). Section 6(b) was also construed liberally in the United States Circuit Court of Appeals for the District of Columbia decision in *AFL–CIO* v. *Marshall*, —— F.2d —— (1979), 1979 CCH OSHD Para. 23,963, *petition for cert. filed* (No. 79–1429). This decision upheld most of OSHA's cotton dust standard, including the innovative medical transfer and wage retention provisions (1979 CCH OSHD Para. 23,963 at pp. 29,086–29,087).

Together, these cases support the concept that OSHA's rulemaking authority is as broad as the general purposes of the Act. The agency may thus fashion suitable remedies to meet particular problems standing in the way of a safe and healthful workplace provided the need for action can be demonstrated and the proposed remedy is feasible. Only explicit statutory prohibitions backed up by clear legislative history can overcome this presumption of authority. Notwithstanding the various rigid interpretations of ss6(b), 6(b)(7), 8(c)(3), 8(g) and 8(d) that have been suggested by several participants as barriers to this rule, none of the statutory sections contains such explicit prohibitions, and there is no legislative history to indicate the contrary. The Supreme Court has provided the appropriate canon of interpretation when faced with statutory provisions such as those relied on here. In *Mourning* v. *Family Publications Services*, 411 U.S. 356 (1973), the Court interpreted language in the Truth in Lending Act strikingly similar to s8(g)(2):

> Where the empowering provision of a statute states simply that the agency may "make . . . such rules and regulations as may be necessary to carry out the provisions of the Act," we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is "reasonably related to the purposes of the enabling legislation." *Thorpe* v. *Housing Authority of City of Dupont*, 393 U.S. 268, 280–281 (1969) (quoting Housing Act of 1937, s81). (411 U.S. at 369)

Moreover, a broad delegation of rulemaking authority in the context of remedial legislation provides for reasonable over-inclusion. If over-inclusion is necessary to remedy the conduct the legislation was intended to deter or control, it will be upheld, for "(n)othing less will meet the demands of our complex economic system," *Mourning*, 411 U.S. at 374, citing *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926) (Accord *State of Fla.* v. *Mathews*, 526 F.2d 319 (5th Cir. 1976); *Environmental Defense Fund* v. *Costle*, 578 F.2d 337 (D.C. Cir. 1978); *American Frozen Food Inst.* v. *Mathews*, 413 F. Supp. 548 (D.C.D.C. 1976)). See also *United States* v. *Bacto-Unidisk*, 394 U.S. 784, 786n.2, 791–92 (1969) ("(I)t is enough for us that the expert agency (FDA) charged with the enforcement of remedial legislation has determined that such regulation is desirable for the public health. . . ."); *FERC* v. *Pennzoil Producing Co.*, No. 77–648 (Jan. 16, 1979), slip op. 8; *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 796–97 (1978); *FPC* v. *Texaco Inc.*, 417 U.S. 380, 394 (1974); *Permian Basin Area Rate Cases*, 390 U.S. 747, 776n.40 (1968); *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 201–3 (1956); *American Trucking Associations* v. *United States*, 344 U.S. 298 (1953); *SEC* v. *Chenery Corp.*, 332 U.S. 194, 207 (1947); *Bowles* v. *Willingham*, 321 U.S. 503, 519 (1944).

The *Mourning* Court also addressed the question of whether specific, affirmative mandates in other sections of a statute carry with them an implied limitation on an agency's general rulemaking authority with respect to additional or alternative remedies the agency deems appropriate to effect. The Court first cited approvingly this statement from *Gemso, Inc.* v. *Walling*, 364 U.S. 244, 255 (1945):

> When command is so explicit and, moreover, is reinforced by necessity in order to make it operative, nothing short of express limitation or abuse of discretion in finding that the necessity exists should undermine the action taken to execute it. (411 U.S. at 370)

The Court went on to say (411 U.S. at 372–3):

> Respondent argues that, in requiring disclosure as to some transactions, Congress intended to preclude the Board from imposing similar requirements as to any other transactions.
>
> To accept respondent's argument would undermine the flexibility sought in vesting broad rulemaking authority in an administrative agency. In *American Trucking Assn. v. United States*, (344 U.S. 298 (1953)) we noted that it was not:
>
> 'a reasonable canon of interpretation that the draftsmen of acts delegating agency powers, as a practical and realistic matter, can or do include specific consideration of every evil sought to be corrected . . . [N]o great acquaintance with practical affairs is required to know that such prescience, either in fact or in the minds of Congress, does not exist. Its very absence, moreover, is precisely one of the reasons why regulatory agencies such as the Commission are created, for it is the fond hope of their authors that they bring to their work the expert's familiarity with industry conditions which members of the delegating legislatures cannot be expected to possess.' 344 U.S. at 309–310, 73 S. Ct. at 314 (citations omitted).

This judicial canon of interpretation should be of particular relevance in considerations of the OSH Act, which the Sixth Circuit in *Marshall v. Whirlpool Corp.*, 593 F. 2d 715 (1979), aff'd —— U.S. ——, 100 S. Ct. 883 (1980), emphasized was the subject of legislative focus on only four major issues: (1) which agency was to set safety and health standards, (2) whether an independent adjudicatory body should be established to administratively review violations, (3) whether employers should be subject to a general requirement to provide a safe and healthful work environment, and (4) whether the Secretary of Labor should have authority to order administrative shutdowns in cases of imminent danger (*Marshall v. Whirlpool Corp.*, 593 F. 2d at 728 n. 26). On other legal questions, such as the ones presented in this rulemaking, the presumption should be in favor of "the flexibility sought in vesting broad rulemaking authority in an administrative agency" *(Mourning, supra)*. In enumerating certain rights given to employees and employee representatives to various sections of the Act, it should not be supposed that Congress intended to deprive OSHA of the authority to establish other rights considered necessary to fulfill the statutory purposes. Rather, the requirements of ss8(c)(3), 6(b)(7), 8(d) and the like are properly to be construed as guideposts and not as ceilings on agency action.

OSHA also does not accept arguments based on s4(b)(1) of the Act (29 U.S.C. 653(b)(1)) that OSHA must yield jurisdiction to the National Labor Relations Board (NLRB) on all matters relating to employee or designated representative access to information pertinent to occupational safety and health. First, the Act and rules issued under it apply equally to employees who are represented by unions with collective bargaining status as well as employees who are not. The latter constitute approximately 80 percent of the workforce (Ex. 177). Second, s4(b)(1)

preemption arguments are clearly overbroad, since any safety or health problem which OSHA could address would also be an appropriate subject for collective bargaining. The failure to bargain in good faith on any health or safety problem would then be the subject of NLRB's adjudicatory and sanctioning powers. It may also be an appropriate matter for arbitration under a collective bargaining agreement. But when Congress added the OSH Act to Federal labor policy, OSHA was given rulemaking authority intended not only to fill gaps in existing labor-management relations and the collective bargaining process, but to place a solid foundation under that process. Worker safety and health was thought by Congress to be too important to be resolved solely by the interplay of private economic forces and the rules established for economic warfare. OSHA, therefore, may appropriately set standards and provide remedies which are independent from, and in addition to, any rights afforded by the National Labor Relations Act. Thus, as an NLRB Administrative Law Judge recently stated in *Colgate-Palmolive Co.*, Case No. 17–CA–8331 (March 27, 1979):

> Accommodation between the [NLRA) and OSHA is to be undertaken in a careful manner so as to preserve the objectives of each. See *Southern Steamship Company v. N.L.R.B.*, 316 U.S. 31, 47 (1942); *Western Addition Community Organization v. N.L.R.B.*, 485 F. 2d 917, 927–28 (C.A.D.C. 1973); *Alleluia Cushion Co.*, 221 N.L.R.B. 999; *Memorandum of Understanding Between Department of Labor, Occupational Safety and Health Administration and National Labor Relations Board*, 40 F.R. 26033 (June, 1975). (*Sl. op.*, p. 13, n. 9.)

OSHA agrees. *Cf. Brennen* v. *Western U. Tel. Co.*, 561 F. 2d 477 (3rd Cir. 1977).

Third, under the terms of s4(b)(1), OSHA's authority for this standard is not preempted because the NLRB has not exercised statutory authority "to prescribe or enforce standards or regulations affecting occupational safety or health" with respect to employees' working conditions. To the extent the NLRB has acted in this area, it has proceeded solely through adjudication, not through standard-setting or rulemaking of general applicability. The object of its adjudications has only been to assure a fair bargaining process, and not to assure safe and healthful working conditions for the workers affected. The triggering requirements of s4(b)(1) have therefore not been satisfied (*See* Rothstein, *Safety and Health Law*, ss18–21(1978)).

Accordingly, OSHA believes that it has ample authority under the Act to promulgate this rule.

B. Access to Records and the Law of Trade Secrets

Section IV.F of the preamble, *supra*, discusses the issue of employee and designated representative access to potential trade secret information. The final standard has been structured to eliminate access to unnecessary trade secret information, and maximize protection of trade secrets where access is provided. Access is provided, however, to chemical and physical agent identity, level of exposure, and health status information regardless of employer trade secret claims. The resolution of the trade secret issue as it pertains to employee and designated representative access to this information has been made with appreciation for the role of trade secrets in American law. Some of the relevant considerations are discussed below.

The law of trade secrets was introduced into American common law in the middle of the last century. *Peabody* v. *Norfolk*, 98 Mass. 452 (1862). It remains principally a matter of state decisional and statutory law. While state trade secret law varies, the description of a trade secret provided by the Restatement of Torts, s757, comment (b) (1939), is commonly accepted:

> A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do no know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers.

A slightly different definition was provided in *U.S. ex rel Norwegian Products Co.* v. *U.S. Tariff Commission*, 6 F.2d 491, 495 (D.C. Cir. 1925), rev'd other grounds 274 U.S. 106 (1927), and applied in some Federal cases. To be a trade secret, the subject matter must be at least substantially secret, minimally novel, and commercially valuable. The factor of cost in the development of a trade secret has also been identified as an element underlying judicial findings of trade secrets, Cavitch, *Business Organizations*, s232.01 (1975). Of these, the element of secrecy is probably the most significant.

But absolute secrecy beyond the knowledge of the holder is not required for information to constitute a trade secret. The corporate holder will necessarily have to divulge information to some employees and others in order to utilize the secret commercially. It may also license its use. Whether a disclosure destroys the element of secrecy depends on the extent, manner, and purpose of the disclosure. *Kewanee Oil Co.* v. *Bicron*, 416 U.S. 470, 477 (1974); Cavitch, *supra.*, s232.01(1). The broadly stated policies behind trade secret law are the maintenance of standards of commercial ethics and the encouragement of invention, *Kewanee Oil* v. *Bicron, supra*, at 481. Provided employees with a "need to know" are under an obligation not to use or disclose information revealed to them in confidence, and the holder of the information has taken measures to restrict access to the information, trade secret law affords the holder of the trade secret with judicial remedies for a breach of confidence or dispossession of the trade secret through improper or unethical means (industrial theft, spying, bribery, etc.). OSHA's treatment of trade secret information in this rule is not meant to deprive employers of these private law protections.

Although the protection of trade secrets is primarily a state-created right, it is necessary to note the existence of certain Federal policies which recognizes the legitimacy of this interest. Perhaps the most important of these, a Federal criminal statute, popularly known as the Trade Secret Act, makes it a criminal offense for a Federal officer to disclose a trade secret "to any extent not authorized by law" (18 U.S.C. 1905). The National Stolen Property Act, 18 U.S.C. 2311, 2314, has also been applied to theft of intangibles. Exemption (b)(4) of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), exempts trade secrets from mandatory disclosure by Federal agencies. Other "anti-disclosure" provisions have been written into various statutes, e.g., Sec. 15 of the OSHA Act (15 U.S.C. 651) and Sec. 14 of the Toxic Substances Control Act (15 U.S.C. 2601). Even in cases covered by the Federal statutes, however, the question of whether something is a trade secret must still be answered by the application of common law principles since, unlike patents and copyrights, there is no Federal statute establishing the law of trade secrets.

There is also relevant Supreme Court law evidencing favorable treatment of the trade secrets interest. In *Kewanee v. Bicron, supra*, the Court held that Ohio's trade secret law is not pre-empted by the Federal patent laws, since the Federal policy of encouraging invention is not disturbed by the existence of another form of incentive to invention such as trade secret protection. More recently, in *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979), the Court examined the interrelationship between 18 U.S.C. 1905 and exemption (b)(4) of the FOIA, holding that while the FOIA does not

prohibit disclosure of trade secrets or confidential business information by an agency, 18 U.S.C. 1905 does prohibit such disclosure if there is no other statute or validly promulgated regulation authorizing the particular disclosure. Therefore, release of trade secret information by an agency may be an actionable abuse of discretion under the Administrative Procedure Act. And in *Detroit Edison Co. v. NLRB*, 411 U.S. 301 (1979), the Court held that the NLRB exceeded its remedial discretion when it ordered the company to turn over to the union psychological aptitude tests and answer sheets, the continued secrecy of which was essential to the integrity of the testing process, rather than accept the company's suggestion that this information be provided only to a psychologist designated by the union. Essentially, the Court balanced the company's interest in test secrecy against the union's interest in access and found that the company's interest in this case was predominant.

These expressions of Federal policy, while suggestive, do not answer the precise question of the extent to which OSHA's policies on worker access to records, which are designed to advance the statutory purposes of promoting occupational safety and health so far as possible, must or should yield, or accommodate themselves, to employers' interests in maintaining the secrecy of trade secrets. This question requires closer examination of Federal pre-emption doctrine, the OSHA statutory scheme, and judicial treatment of trade secrets in analogous situations.

Under the Supremacy Clause of the Constitution (Art. VI, cl. 2), Federal law takes precedence over state law whenever they clash or conflict. The test which the Supreme Court has consistently followed in Federal pre-emption cases is two-fold: (1) whether the Federal and state regulatory schemes inescapably conflict, and (2) whether the Congressional intent was to oust the state from a particular field. Even absent an overt manifestation of such congressional intent, the Supremacy Clause requires the invalidation of any state law that burdens or conflicts in any manner with any Federal law. *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977); *DeCanas v. Bica*, 424 U.S. 351 (1976); *Sears, Roebuck & Co. v. Stiffel*, 376 U.S. 225 (1964); *Florida Lime & Avocado Growers v. Paul*, 373 U.S. 132 (1963); *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173 (1942); *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Savage v. Jones*, 225 U.S. 501 (1911).

This statement from *Savage v. Jones, supra.*, remains valid (225 U.S. at 533):

> For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field also must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power.

Consider also *Florida Lime & Avocado Growers, supra.*, (373 U.S. at 142):

> A holding of Federal exclusion of state law is inescapable and requires no inquiry into congressional design when compliance with both Federal and state regulations is a physical impossibility . . .

In promulgating this access rule, OSHA is implementing its mandate to afford employees safe and healthful working conditions by enabling them, among other things, to know what chemicals they are exposed to and what the hazards are to the extent such information is available in exposure and medical records which employers already maintain. Based on industry testimony, there may be an undetermined number of exposure records containing information involving the identities and exposure levels of chemicals which could be considered bona fide trade secrets (i.e., after taking into account the possibility of reverse engineering and other readily available analytical techniques). Yet, if employees are to be afforded safe and healthful working conditions, they must be fully informed of what chemicals they are exposed to, whether or not they are trade secrets. Knowledge of the chemical names of trade products is essential if one is to learn of the inherent hazards, particularly since indexes to the scientific literature are generally maintained only by chemical name. Accordingly, if OSHA were to exempt trade secrets altogether from the access provisions of this rule, its "operation . . . must be frustrated and its provisions . . . refused their natural effect."

Given the appearance of an inescapable conflict between this rule's health purposes and trade secret claims based on state law protection, a finding of express Congressional intent to override trade secrets is not necessary, since each of the two tests for pre-emption operates independently. Nevertheless, OSHA's statutory scheme as well as Congressional intent should be carefully considered if only to make sure that Congress did not express a contrary intent.

The only section of the OSHA Act concerned directly with trade secrets is section 15 (29 U.S.C. 664). It states:

> All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this act or when relevant in any proceeding under the Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Section 15 plainly contemplates that OSHA should have access to trade secrets as necessary. This section adds nothing to the obligation already imposed upon federal employees by an existing criminal statute (18 U.S.C. 1905), except to indicate that such information may be disclosed to other officers or employees concerned with carrying out the Act or when relevant in any proceeding. In the latter situation, it provides for the possibility of appropriate protective orders. In interpreting this section, the Occupational Safety and Health Review Commission has said: "Hence, section 15 is in the nature of an exemption from 18 U.S.C. 1905 rather than a prohibition and clearly does not limit access to trade secrets only to federal employees." (Footnote omitted). *Secretary of Labor v. Owens-Illinois, Inc.*, 1978 CCH OSHD Para. 23,218, at pp. 28,072 (access to outside expert consultant in enforcement case). Cf. *Chrysler Corp. v. Brown, supra.*

As such, section 15 contemplates that OSHA might undertake proceedings or promulgate recordkeeping requirements resulting in the disclosure of trade secrets. In such cases, a general obligation is imposed on OSHA to keep confidential all information which the agency obtains via reports or otherwise and which contains or which might reveal a trade secret, although disclosure may be made "when relevant." To carry out its obligations, OSHA has already issued regulations and administrative directives addressing the special treatment of trade secrets (29 CFR 1903.9; Ex. 113; cf. *Sec. of Labor v. Owens-Illinois, Inc., supra*). These are in addition to the criminal penalties of 18 U.S.C. 1905 for unauthorized disclosure of trade secrets.

Section 15 reflects an apparent Congressional interest in balancing

competing interests based on providing protection to trade secrets to the extent consistent with carrying out the overall statutory purposes. The section does not define "trade secrets" or provide precise guidance beyond the "relevance" standard on how the necessary balance is to be struck; and the legislative history, which consists of different versions of the same provision contained in the different bills, does little to illuminate the section further. The section, however, is consistent with how Congress had addressed trade secrets in other statutes (e.g., 15 U.S.C. 1401(e) (the National Traffic and Motor Vehicle Act of 1966)).

More recently, however, Congress has expressed its intent in this area in the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 et seq.), a public health statute which in purpose and effect is in many respects analogous to OSHA's. Its section 14 (15 U.S.C. 2613) substantively parallels OSHA's section 15 except that it explicitly provides for public disclosure of trade secrets "if the Administrator of the Environmental Protection Agency determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment" and also for the disclosure of "health and safety studies" other than "data which disclose processes . . . or, in the case of a mixture, . . . data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture." See also, the 1978 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136h). The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.*, is silent on the issue of trade secrets.

In addition, the House Committee on Government Operations has twice urged OSHA to exercise its rulemaking authority to insure that employers and workers alike are apprised of the kinds of toxic dangers present in workplaces notwithstanding the prevalence of trade name products (House Report No. 94–1688 (Sept. 1976); House Report No. 95–710 (Oct. 1977)).

Whatever the precise meaning of "trade secrets" intended in section 15, the section, by its terms, does not operate as a limitation on OSHA's rulemaking authority; that is, it does not address OSHA's ability to issue occupational safety and health standards or other rules which may incidentally affect trade secret interests by requiring information transfers from employers to employees or their representatives. Indeed, s6(b)(7) affirmatively requires any standard to "prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed," and s8(c)(3) requires that "such regulations shall also make appropriate provision for each employee or former employer to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents." These sections reflect the Congressional determination that certain information must be given to employees, without regard to any possible trade secret interests of employers. The regulations issued today are consistent with this Congressional intent. The only express limitation on OSHA's rulemaking, other than a requirement that they be based on substantial evidence, is that rules be feasible (section 6(b)(5) of the Act; 29 U.S.C. 655(b)). Since the harm of trade secret disclosure is an economic one, it is possible to conclude that trade secrets should be considered as one element of the economic feasibility inquiry, and not as something which stands as an independent obstacle to the access rule regardless of its feasibility. But access to exposure records surely presents no problems of technical feasibility, and nothing in the record would support a finding that lack of special treatment for trade secret information would render the rule economically infeasible.

Based on the foregoing analysis, the agency concluded that its authority to promulgate this rule can serve to pre-empt state law trade secret interests if necessary or appropriate to promote occupational safety and health. However, rather than totally pre-empting state law trade secret interests, the agency chose to seek means to accommodate the competing interests to the extent possible. But, where the competing interests irreconcilably clash, the interest in employee safety and health prevails. This approach is consistent with the balancing approach expressed in section 15 and other Federal policies. It is also consistent with Federal pre-emption doctrine itself:

> [C]onflicting law, absent repealing or exclusivity provisions, should be pre-empted * * * "only to the extent necessary to protect the achievement of the aims of" the federal law since the proper approach is to reconcile "the operation of both statutory schemes with one another rather than holding [the state scheme] completely ousted."

DeCanas v. Bica, supra., 424 U.S. at 357 n.5, quoting *Merrill, Lynch v. Ware*, 414 U.S. 117, 127 (1973) quoting *Silver v. New York Stock Exchange*, 373 U.S. 341, 361, and 357 (1963).

The priority attached to safety and health concerns by this rule is also consistent with the law of trade secrets in analogous contexts. It is necessary to remember that the interest in trade secrets in never absolute. For instance, the law ordinarily protects a holder of a trade secret from a breach of confidence or dispossession of the trade secret by improper or unethical means, but not against independent discovery, *Kewanee v. Bicron, supra.* More significantly, the trade secrets interest is not considered to be an absolute right in the face of a strong countervailing public interest in the information. Thus, in the beginning of the century, the Federal courts considered a number of cases involving economic due process challenges to the state's authority to require disclosure of ingredient information in the regulation of foods and drugs to promote safety and health and to prevent fraud and deception of purchasers. In one such case, *Arbuckle v. Blackburn*, 113 Fed. Rep. 616 (6th Cir. 1902), *aff'd* 191 U.S. 405 (1903), the Court stated (at p. 627):

> The enactment of laws for the protection of health and safety and to prevent imposition in the sale of food products is within this [state police] power, and the fact that the process by which it is made is protected by a patent, while it may prevent others from using it during the life of the patent, does not deprive the state of the power of regulation for the general good.

Savage v. Jones, supra, involved an Indiana statute which, among other things, required ingredient labeling to prevent fraud in the sale of animal feed. The Supreme Count declined to consider the trade secrets issue, since the statute did not demand the disclosure of formulas or manner of combination but rather only a statement of the ingredients, "* * * a requirement of obvious propriety in connection with substances purveyed as feeding stuff" (225 U.S. at 524).

Moreover, in more recent times, judicial and administrative courts have similarly taken the position that, if the information is indispensable for ascertaining the facts, the evidentiary "privilege" for trade secrets must give way even when the possessor of the secret is a bystander who may be unfairly injured by broad dissemination of the information. This is particularly true when the public interest in disclosure stems from a safety or health rationale. *Uribe v. Howie*, App., 96 Cal. Rpt. 493 (1977) (pest control reports); *Carter Products, Inc. v. Eversharp, Inc.*, 360 F.2d 868 (7th Cir. 1966) (patent infringement); *Wilson v. Superior Ct.*, 225 P. 881 (1924) (chemical composition of explosive); *Secretary of Labor v. Owens-Illinois, supra.; U.S. v. 48 Jars More or Less*, 23 F.R.D. 192 (D.D.C. 1958)

(FDA suit for seizure and condemnation of misbranded article); Cf. *Jacobson v. Massachusetts*, 197 U.S. 11 (1904) (compulsory vaccinations). Significantly, this has also been the approach of the NLRB when faced with union requests for access to trade secret information. *Ingalls Shipbuilding Corp.*, 143 NLRB 712, 717 (1963); *Minnesota Mining & Manufacturing, Co., supra.; Borden Chemical, supra.*

Consequently, the law of trade secrets fully supports OSHA's treatment of trade secrets in this final rule, which reflects these two principles: (1) if there is a valid trade secret claim, means should be sought if possible to reconcile the trade secrets interest with the statutorily mandated interest in occupational safety and health, but where the two interests irreconcilably conflict, the safety and health interest must predominate; and (2) to the extent OSHA's regulatory policy favoring employee and employee representative access to exposure records results in the disclosure of trade secrets for safety and health purposes, this should not derogate from the employer's private law rights and remedies to protect the trade secret status of the information from redisclosure for non-safety and health purposes.

C. OSHA Access to Employee Medical Records and the Right of Privacy

The right of privacy, and the corresponding duty of confidentiality, have been recognized in both common law and Constitutional law. This section will discuss the constitutional considerations raised by OSHA access to medical records, while the section which follows will discuss the common law aspects of the duty of confidentiality.

Section IV.H of the preamble, *supra*, discusses the agency's decision to structure the final standard to provide for unconsented agency access to identifiable employee medical records. Because Federal action is involved, OSHA access to personally, identifiable medical records raises the legal question of whether the public interest in OSHA access overrides, or can be accommodated to, the employees' privacy interests. The right of privacy has been recognized as a constitutionally protected value. *Roe v. Wade*, 410 U.S. 113 (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965). In *Roe v. Wade*, the Court located the privacy interest in the Fourteenth Amendment's concept of personal liberty, 410 U.S. at 152–153; *Whalen v. Roe*, 429 U.S. 589n. 23 (1977). (Presumably, it is applicable to the Federal government via the Fifth Amendment). When recognized, the right of privacy has generally been invoked to protect against unreasonable governmental intrusions into certain zones of personal intimacy (e.g., contraception, abortion). As has already been stated, at least two separate interests have been identified as aspects of the concept of privacy: the individual interest in avoiding disclosure of personal matters, and the interest of independence in making certain kinds of important decisions. *Whalen v. Roe, supra.*, 429 U.S. at 599–600.

It is primarily the first interest—avoiding disclosure of personal matters—which is at stake when a public agency like OSHA seeks access to identifiable medical records without consent. To the extent such access deters employees from seeking treatment or confiding in company physicians, the second interest would also be implicated. *Whalen v. Roe* is the leading constitutional case with respect to the privacy of medical information. In that case, the Court denied a constitutional challenge alleging invasion of the patient's right to privacy by a New York statute requiring that a copy of prescriptions (including names of recipients) of certain dangerous but legitimate drugs be sent to the state health department and put on computer. The Court held that "the New York program does not, on its face, pose a sufficiently grievous threat to either interest to establish a constitutional violation." *Id.* at 600. It stated (at p. 602):

> Unquestionably, some individuals' concern for their own privacy may lead them to avoid or to postpone needed medical attention. Nevertheless, disclosures of private medical information to doctors, to hospital personnel, to insurance companies, and to public health agencies are often an essential part of modern medical practice even where the disclosure may reflect unfavorably on the character of the patient. Requiring such disclosures to representatives of the State having responsibility for the health of the community, does not automatically amount to an impermissible invasion of privacy. (Footnote omitted.)

This holding is consistent with the common law principle that the public interest, such as that asserted by a public health agency to prevent illness, overrides the duty of confidentiality which otherwise would pertain (*See*, V.E, *infra.*). Also noteworthy was the *Whalen* Court's complete rejection of the physicians' claim that such data collection was an unconstitutional interference with a physician's right to practice medicine free of unwarranted state interference: "the doctors' claim is derivative from, and therefore no stronger than, the patients'." (at p. 604).

Of particular significance in the determination of the case was the fact that the state was taking reasonable steps to insure the confidentiality of the information reported to it, since "the right to collect and use such data for public purposes is typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures." (at p. 655). OSHA likewise recognizes such a duty and has taken steps comparable to those found constitutionally adequate by the Supreme Court in *Whalen v. Roe*. These steps can be found in the procedural regulations governing OSHA access to medical records, published today as s1913.10 of 29 CFR.

District court decisions upholding NIOSH's and OSHA's right to seek access to personally identifiable medical records are also highly relevant. In *DuPont v. Finklea*, 442 F. Supp. 821 (S.D. W. Va., 1977), *Whalen v. Roe* was explicitly applied to a NIOSH health hazard evaluation. The Court found that it was within NIOSH's statutory authority to request access to identifiable medical records for the purpose of conducting a cancer study, even though, in this case, the employees themselves had affirmatively withheld consent. Notwithstanding the fact that the information sought was determined to be within a constitutionally protected zone of privacy, the court held that this privacy right would not be abridged by NIOSH's access to the records. The fact that no evidence had been adduced which would show or even tend to show that the information sought to be gathered would be used improperly was of particular significance. The Court's detailed order was designed to assure that NIOSH would keep the information confidential, but employee consent was *not* made a condition of NIOSH's access.

NIOSH's right of access to personally identifiable medical records without consent has also been recently upheld in *United States v. Westinghouse Electric Corp.*, C.A. 79–774 (W.D. Pa., Jan. 31, 1980). Presented with essentially identical facts as in *DuPont*, the Court held:

> In our case, Westinghouse is the employer of a number of persons, and it seeks, as it asserts, to protect the privilege of its employees and prevent divulging of medical information taken by its doctors as of the time when they were employed. It is not for [this court] to determine what the respondent's interest is here. What matters is that the United States through Congress has expressed a serious concern for these same employees who might have been patients of the respondent's doctors. As such, it accordingly assumes a superior position and responsibility for protecting these same

employees than does the employer. This is a constitutional right in the Congress to do so for the purpose of preserving the health and welfare of the public, wherever such circumstances may exist. (p. 12, sl. op.)

* * * * *

NIOSH must have the entire medical records in personally identifiable form of the employees under study in order to properly conduct its Health Hazard Evaluation, to facilitate adequate record-keeping of the information and to prepare an adequate study of the matter. The function which the petitioner is exercising here is not only appropriate but is legally and authoritatively mandated. It is not within the power of the courts to thwart such statutory and constitutional functions, but to the contrary, the courts must lend their judicial authority to aid the petitioner to so function. (p. 14, sl. op.)

By so holding, *Westinghouse* all but rejects *General Motors v. Finklea*, 459 F. Supp. 235 (S.D. Ohio, 1978). The *GM* Court had held that while NIOSH has statutory authority to seek access to medical records, the individually identifying data could be withheld from the agency absent a showing of compelling need, and even then, every employee might be entitled to a due process hearing to determine whether or not identifiable records could be examined without the employee's consent. As *Westinghouse* properly points out, the *GM* decision was based upon Ohio's physician-patient privilege law and not upon general principles protecting the right of privacy itself; and in any event, the existence of such a state privilege is irrelevant since "no physician-patient privilege exists as a matter of Federal common law." (p. 9, sl. op.). To the extent that *GM*, which is being appealed by the Government, deviates from *Whalen v. Roe* in its analysis of legal principles, it cannot be considered controlling law.

Most recently, OSHA's own right to subpoena employer-generated exposure and medical records has been upheld in *Marshall v. American Olean Tile Co.*, No. 79–597 (E.D. Pa., Feb. 29, 1980). The court stated:

* * * the Secretary [of Labor] performs legislative as well as enforcement functions. He needs information to develop standards as well as to enforce compliance with these standards. Although he may obtain that information through recordkeeping requirements or investigations by the National Institute for Occupational Safety and Health (NIOSH), inspections and evidence subpoenaed may also provide useful data. Because the remedial purposes of the Act may be furthered by inspections and subpoenas designed to explore the causes and prevention of occupational illnesses, we decline to find that the authorization of inspections "to carry out the purposes of this chapter" extends only to enforcement. If the information requested is relevant to any of the Secretary's functions and its production is not unduly burdensome, the subpoena should be enforced.[2]

Having considered the relevant case law, therefore, OSHA is confident that OSHA access to personally identifiable employee medical records is constitutionally permissible when accompanied by strict protective measures such as the administrative regulations OSHA is promulgating today.

Finally, the separate constitutional right of employers to be free of unreasonable searches and seizures must also be taken into account. *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978) held that the Fourth Amendment requires OSHA to get a warrant from a neutral magistrate before conducting an inspection of a workplace if an employer objects to entry. Footnote 22 of that decision states (at p. 324):

Delineating the scope of a search with some care is particularly important where documents are involved.

. . . It is the Secretary's position, which we reject, that an inspection of documents of this scope may be effected without a warrant.

Therefore, while OSHA anticipates voluntary employer acceptance of OSHA access to medical records in most cases, we recognize that the OSHA access requirement of this rule may not be self-enforcing. In the aftermath of *Barlow's*, this is a rapidly evolving area of the law, and the exact means OSHA will choose to gain access to records if an employer refuses to provide access voluntarily will depend on the particular circumstances of the case and future developments in the law.

D. OSHA Access to Employee Medical Records and the Common Law Duty of Confidentiality

The physician's traditional duty of confidentiality owed to medical information, which derives from the patient's right of privacy in that information, is never absolute and may be overridden by a supervening public interest such as the one asserted here by OSHA. The duty of the physician to maintain the confidentiality of information acquired in the course of a physician-patient relationship has always been recognized as an ethical requirement imposed by the profession. The Hippocratic Oath obliges physicians to keep secret whatever is learned in connection with their professional practice. In addition, the Principles of Medical Ethics of the American Medical Association prohibit a physician from revealing confidences learned in the course of medical attendance, *unless required to do so by law or if it becomes necessary to protect the welfare of the community or the individual* (Ex. 105). A physician may be disciplined by the local medical society for failure to abide by these ethical rules (Dr. Steen (AMA), Tr. 2398).

In common law, the physician-patient privilege was not traditionally recognized. This meant that, whatever the ethical obligations, the physician had no legal obligation to protect patient communications from disclosure to a third party (Ex. 147, p. 1117; *Horne* v. *Patton*, (1973, S. Ct. Ala.) 287 So. 2d 824, at 833 (J. McCall, dissent)). In the absence of testimonial privilege statutes, several courts have found that there was no liability for disclosure to third parties where the common law rule was applicable. *Collins* v. *Howard*, (1957, D. Ct. Ga.), 156 F. Supp. 322 (disclosure to plaintiff's employer); *Quarles* v. *Sutherland*, (1965 Tenn.), 389 SW 2d 249 (disclosure to store's attorney).

The modern rule, by contrast, appears to be that, in general, the duty of confidentiality is legally recognized and enforceable regardless of whether the state has enacted a physician-patient testimonial privilege. Most states have in fact created testimonial privileges which generally prohibit physicians from revealing confidential information in judicial proceedings unless the privilege is waived by the patient or by application of one of the recognized exceptions to the rule (HRG, Ex. 122E). Even in states without a testimonial privilege, or where the third party disclosure is outside a court proceeding and thus not directly covered by the privilege, courts tend to find grounds upon which a patient can hold a physician liable for unauthorized disclosure of confidential information.

Most frequently the courts have upheld the right of a patient to recover damages from a physician for unauthorized disclosure concerning the patient on the grounds that such disclosure constitutes an actionable tort under the state's common law or statutory privacy rights (Ex. 147, s3 (cases cited)). Recovery has also been granted on the grounds that: (1) disclosure by the physician constitutes a breach of a legally recognized confidential or privileged relationship between the patient and physician (Ex. 147, s4(a) (cases cited)); (2) violation of statutory requirements concerning the licensing or conduct of a physician gives rise to a tort action by the patient (Ex. 147, s5 (cases cited)); and (3)

[2] * * * Since the Secretary of Labor has ultimate responsibility for rulemaking under the Act, his authority under s657 should be at least commensurate with NIOSH's authority under that same section. * * * (pp. 3–4, sl. op.)

unauthorized disclosure constitutes a breach of an implied contractual obligation not to divulge confidences. *Horne* v. *Patton, supra,* 287 So. 2d at 831–2; *Hammonds* v. *Aetna Casualty and Surety Co.,* (1965, N.D. Ohio), 243 F. Supp. 793, at 801. Accord *Clark* v. *Geraci* (1960), 208 NYS 2d 564.

The duty of confidentiality, however, is not absolute. In the occupational setting, to the extent that the physician-patient relationship does not exist, the legal duty of confidentiality may not exist either or is at least attenuated. Thus, the *Beadling v. Sirotta* (disclosure to personnel department of applicant's condition) and *Quarles v. Sutherland* (disclosure to store's attorney of customer's condition) cases, *supra.,* both upheld unauthorized intra-corporate disclosures on the basis of there being no doctor-patient relationship. Also relevant is *Pitcher v. Iberia Parrish School Bd.* (1973, La. App.), 280 So. 2d 603, *cert den'd,* 416 U.S. 904 (1974), which held that a school board had the right to obtain the results of annual physical examinations required of teachers, without distinguishing whether the examinations were performed by the teachers' personal physicians or by the school board's physician. However, such disclosure of medical records to management or to others outside the company without the employee's consent would clearly be viewed today as a breach of professional ethics. Moreover, under existing law, unauthorized disclosure outside the company is of questionable legality and could be attacked on the grounds stated above: violation of a state privacy act (applicable in about three-quarters of the states), defamation, malicious misrepresentation, and possibly even breach of an implied contract of confidentiality (NCCHR, Ex. 125, pp. 7–8).

There are nevertheless numerous exceptions to the duty of confidentiality even when a physician-patient relationship clearly exists. The most obvious exception occurs when the patient consents to the disclosure of his medical records. Often, however, the patient may not realize the extent to which consent results in wide distribution of the medical records within the health care facility and to third party payers (Annas, Ex. 56B, pp. 148–149).

Even in the absence of consent, disclosure of confidential information is legally permitted in a number of situations. As provided in this standard, disclosure may be made for certain overriding competing interests to which the law affords greater protection than to the interest of the patient in keeping the information undisclosed, as where the public interest demands, for health reasons, the disclosure of such information (Ex. 147, s6(a) (cases cited)). A physician cannot be held liable if he or she was required by law to make such disclosure (Ex. 147, s7 (cases cite)). Almost all states have a wide variety of conditions and diseases (e.g., vital statistics, contagious and dangerous diseases, child neglect and abuse, drug abuse, and criminally inflicted injuries) which must be reported to the public authorities when discovered by the physician. These take precedence over privilege statutes and the physician's ethical obligation to maintain a patient's confidence (Annas, Ex. 56B, p. 148; *Whalen v. Roe, supra.; General Motors v. Finklea,* S.D. Ohio, C.A., C–3–77–339 (1978)).

Other exceptions exist as well. When an individual makes his or her own physicial condition an issue in a lawsuit (e.g., personal injury claim), most courts will permit examination of the physician under oath either before or during the trial. Even in states with privilege statutes, there are exceptions which permit bringing personal medical information into court without consent. For example, medical information is often available in criminal cases, and almost always in malpractice cases (Annas, Ex. 56B, p. 150).

The general rule is that courts will afford physicians wide latitude in making disclosures they believe are in the best interests of their patients, such as when disclosures are made to a spouse or near relative without the patient's consent (Annas, Ex. 56B, p. 149; Ex. 147, s6(b) (cases cited)). Moreover, in a number of jurisdictions liability against a physician will be denied unless it can be shown that the disclosure was made maliciously (Ex. 147, s8 (cases cited)). There have been no reported appellate decisions in the United States where any physician or hospital has ever had to pay money damages to any patient for the unauthorized disclosure of medical records (Annas, Ex. 56B, p. 148).

From the foregoing, OSHA concludes that its access to employee medical records, as provided for in this standard and as limited by the administrative regulations, is legally permissible and does not constitute an unwarranted interference with employee privacy.

VI. Feasibility Considerations

In promulgating an occupational safety and health standard pursuant to section 6(b) of the Act, the agency considers the question of feasibility. Feasibility analysis involves two inquiries: whether the rule is technologically feasibility, and whether the rule is economically feasible (*See,* 43 FR 54473–54476 (Nov. 21, 1978)). In this case, since the final standard simply requires the preservation and availability of records which employers for one or more reasons have already chosen to create, there can be no doubt that the standard is technologically feasible. No participant in the rulemaking proceeding argued otherwise.

Numerous industry participants objected to the perceived economic burdens that would allegedly result from the standard. No participant, however, argued that the administrative costs involved rendered the standard economically infeasible, nor is there any evidence in the rulemaking record which could support such a suggestion, regardless of the definition of "economic feasibility" applied. The final standard has been carefully drafted to provide employers substantial flexibility as to how they preserve records subject to the standard, and how these records are made available to employees and their designated representatives. It is OSHA's conclusion that the final standard does not pose substantial economic burdens on employers, and is a feasible standard.

OSHA rulemakings not only consider questions of economic feasibility, but, depending on the nature of the rule, analyze the broader issue of the overall impact of a rule on industry and the economy. Executive Order 12044 ("Improving Government Regulation," 43 FR 12660 (March 24, 1978)) provides for a "Regulatory Analysis" where a rule has major economic consequences for the general economy, individual industries, geographical regions or levels of government. When OSHA issued the proposed access rule, it determined that preparation of a formal Regulatory Analysis document in accordance with E.O. 12044 would not be necessary. OSHA based this determination on the fact that the final rule would neither mandate the creation of new records or reports, nor impose independent obligations on employers to monitor or measure employee exposures. The rule would not require employers to provide medical surveillance or examinations, nor would it establish other mandatory requirements as to the format or content of exposure and medical records. Therefore, while administrative costs would be incurred in preserving records and in providing access to them over and above current practices, there was no reason to believe that either of the two economic thresholds established in

E.O. 12044 (an annual effect on the economy of $100 million or a major increase in costs or prices for individual industries, levels of government or geographical regions) would be exceeded. (The Secretary of Labor's final guidelines for implementing E.O. 12044 were not issued until January 26, 1979 (44 FR 5570)).

In its notice of hearings (43 FR 46322, October 6, 1978), OSHA specifically invited comment on the economic impact of the proposal. OSHA's preliminary determinations on economic impact and its invitation for further comment on this issue were restated in its opening statement at the public hearings (Ex. 7, p. 28).

Both the decision not to do a Regulatory Analysis, and OSHA's underlying rationale that the economic impact of the rule would not be great or particularly burdensome, were criticized by industry groups. Participants who argued that a Regulatory Analysis should have been made included the National Association of Manufacturers (Ex. 2(135), p. 8), the Chamber of Commerce (Ex. 37, pp. 3–4), the American Petroleum Institute (Ex. 158, pp. 43–44), the Organization Resources Counselors (Ex. 159, p. 2), and the Edison Electric Institute (Ex. 162, p. 18). There was also considerable industry testimony that the proposal would place an undue administrative and economic burden on employers (Magma Copper, Tr. 1451; EEI, Tr. 1774; API, Tr. 2067; NAM, Tr. 2176–78; Refractories Inst., Tr. 2215–16). In particular, employers argued that the burdens of compliance would be particularly great for small business (Amdur, Tr. 572; Chamber of Commerce, Tr. 979; Crowley Maritime, Tr. 1578; NAM, Tr. 2177–78; Refractories Inst., Tr. 2216), companies with multiple work sites (Southern Cal. Edison, Tr. 1515), companies with mobile work sites (Steel Plate Fabricators, Tr. 2522), and companies with transient work forces (Fertilizer Inst., Tr. 2160–61).

Although numerous employers complained of the alleged "burdens of compliance," they presented no quantitative or specific information on how this standard would present anything other than incidental administrative expenses. The API was the only participant who introduced any quantitative information on costs. These were drawn from the estimates on total recordkeeping costs that had been made in several OSHA economic impact statements regarding the regulation of specific substances (Ex. 132a–f). While not intended to show the actual costs of this rule, API presented this data for the purpose of indicating that the likely costs would exceed $100 million, and therefore a Regulatory Analysis would be required (Tr. 2123). However, the cost estimates contained in these prior economic analyses pertained exclusively to the costs of creating and storing records which, in the absence of the regulation, would not be created or kept at all; and therefore the entire cost of recordkeeping was attributable to the proposed regulations (Tr. 2119–20). None of the costs pertained to the limited costs of providing access (Tr. 224). Consequently, these analyses are irrelevant to consideration of the economic impact of the current standard.

The economic burdens presented by the final standard are largely a function of three factors: (1) the extent to which records are actually created by employers, (2) the extent to which the preservation periods and access provisions of this rule go beyond current practices, and (3) the likelihood that employees will exercise their rights of access. Examination of these three factors supports the agency's conclusion that this standard will not present major compliance burdens to industry.

The impact of the final standard first of all depends on the extent to which exposure and medical records are actually created in industry. The NIOSH National Occupational Hazards (NOH) Survey examined several factors which bear on this issue. The NIOSH survey examined the extent to which businesses receive industrial hygiene services (Ex. 171, Table 2), regularly monitor environmental conditions (Ex. 171, Table 27), have formally established health units (Ex. 171, Table 4), regularly record health information about new employees (Ex. 171, Table 9), require preplacement physical examinations of employees (Ex. 171, Table 10), provide periodic medical examinations of some type to employees (Ex. 171, Table 11), and both receive industrial hygiene services and have a formally established health unit (Ex. 171, Table 38). Examination of the data in these tables yields several conclusions. Many employers generate neither exposure nor medical records, and thus will experience little or no impact from this rule. To the extent records exist (other than pertaining to pre-employment medical information), they are generated primarily by large employers (over 500 employees), who would be expected to have existing administrative staffs that could absorb the administrative burdens of this rule. Smaller employers (less than 250 employees) are likely to generate very few records, and thus will experience little impact (*See also*, Fertilizer Inst., Tr. 2163–65). When they do keep exposure records, it is likely because there is a potential hazard concerning the exposure being monitored (Duncan (NAM), Tr. 2200). And finally, records are generated primarily by basic manufacturing employers, including chemical and allied products employers, and rarely by contract construction employers who would be expected to have transient workforces and workplaces. The burdens of the final standard will thus fall most heavily on large employers in industry sectors with substantial use of toxic substances and harmful physical agents (*See*, NAM, Tr. 2200). Two tables which consolidate selected data from the NIOSH NOH Survey (Ex. 171, Tables 2, 4, 9, 10, 11, 27, 38, *supra*) are as follows:

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TABLE 1 - FACTORS RELEVANT TO THE EXISTENCE OF EXPOSURE AND MEDICAL RECORDS-- BY SIZE OF PLANT

	FACTORS RELEVANT TO THE EXISTENCE OF EXPOSURE AND MEDICAL RECORDS	PERCENTAGES OF PLANTS-ALL INDUSTRIES				TOTAL PERCENTAGES OF EMPLOYEES COVERED
		SMALL (8-250)	MEDIUM (250-500)	LARGE (OVER 500)	TOTAL	
1.	INDUSTRIAL HYGIENE SERVICES ARE USED	1.5	15.3	42.3	3.1	24.2
2.	ENVIRONMENTAL CONDITIONS ARE REGULARLY MONITORED	1.4	9.0	43.0	2.5	21.7
3.	A FORMALLY ESTABLISHED HEALTH UNIT EXISTS	2.3	13.6	70.0	4.0	31.5
4.	HEALTH INFORMATION ON NEW EMPLOYEES IS REGULARLY RECORDED	50.9	79.6	96.3	53.7	78.4
5.	PRE-PLACEMENT PHYSICAL EXAMINATIONS ARE REQUIRED	15.0	44.3	75.0	18.1	47.7
6.	PERIODIC MEDICAL EXAMINATIONS OF SOME TYPE ARE PROVIDED	8.9	26.2	54.9	10.8	33.7
7.	BOTH INDUSTRIAL HYGIENE SERVICES ARE USED AND A FORMALLY ESTABLISHED HEALTH UNIT EXISTS	0.1	4.2	34.2	0.8	17.9

TABLE 2 - FACTORS RELEVANT TO THE EXISTENCE OF EXPOSURE AND MEDICAL RECORDS-- BY TYPE OF INDUSTRY

	FACTORS RELEVANT TO THE EXISTENCE OF EXPOSURE AND MEDICAL RECORDS	PERCENTAGES OF PLANTS							
		ALL INDUSTRIES		MANUFACTURING		CHEMICALS AND ALLIED PRODUCTS		CONTRACT CONSTRUCTION	
		TOTAL	LARGE	TOTAL	LARGE	TOTAL	LARGE	TOTAL	LARGE
1.	INDUSTRIAL HYGIENE SERVICES ARE USED	3.1	42.3	12.4	70.0	29.0	89.1	1.4	43.6
2.	ENVIRONMENTAL CONDITIONS ARE REGULARLY MONITORED	2.5	43.0	6.1	51.1	21.3	71.9	1.5	0.0
3.	A FORMALLY ESTABLISHED HEALTH UNIT EXISTS	4.0	70.0	8.5	80.4	14.4	79.4	0.5	22.3
4.	HEALTH INFORMATION ON NEW EMPLOYEES IS REGULARLY RECORDED	53.7	96.3	61.5	99.0	80.2	100.0	29.2	64.9
5.	PRE-PLACEMENT PHYSICAL EXAMINATIONS ARE REQUIRED	18.1	75.0	25.9	87.3	48.4	89.1	5.6	0.0
6.	PERIODIC MEDICAL EXAMINATIONS OF SOME TYPE ARE PROVIDED	10.8	54.9	14.9	59.1	28.6	58.9	1.9	8.5
7.	BOTH INDUSTRIAL HYGIENE SERVICES ARE USED AND A FORMALLY ESTABLISHED HEALTH UNIT EXISTS	0.8	34.2	3.9	58.2	10.9	79.4	0.1	0.0

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The economic impact of this standard also depends on the extent to which the preservation and access provisions of the final rule go beyond current industrial practices. As discussed in Part VII.D, *infra*, medical records are currently generally maintained for extremely long periods of time. The record is less clear as to general retention practices regarding exposure records, but NIOSH indicated its experience that employers were increasingly maintaining exposure records for thirty or more years (Ex. 16, p. 7). The ongoing development of sophisticated information retrieval systems by corporations and hospitals will also serve to minimize the impact of the rule (*See*, AMRA, Tr. 2465; Illinois Bell, Tr. 2532; AMOCO, Ex. 133, p. 2; API, Ex. 158, p. 47n.99). Finally, numerous employers emphasized that they currently afford worker access to occupational exposure and medical information (Union Carbide Co., Ex. 2(104), p. 1; Shell Oil Co., Ex. 2(105), p. 2; API, Ex. 158, p. 18; Polaroid Corp., Ex. 2(187), pp. 1–2; Sheratt (Data Gen. Corp.), Tr. 2002–3; EEI, Tr. 1783–4; NAM, Tr. 2195).

The third major factor affecting the economic impact of this standard is the likelihood that employees and designated representatives will frequently invoke their access rights. While the record indicates that many employees and unions do intend to invoke their rights under this standard, there is no reason to expect a flood of either initial or periodic requests for access (*See*, Chamber of Commerce, Tr. 997; EEI, Tr. 1784; Privacy Commission, Ex. 101, pp. 288–9; Ex. 103; Annas, Tr. 1759–60; Weiner, Ex. 163).

In addition, the standard contains a number of provisions which should result in minimizing the final standard's burdens on industry. These include:

(1) Limiting the scope of the standard to records relevant to employees exposed to toxic substances or harmful physical agents;

(2) Defining "analyses using exposure and medical records" in a way which avoids requiring access to purely preliminary drafts;

(3) Excluding certain physical specimens, health insurance records, and employee assistance programs records from coverage by the standard;

(4) Reducing the required retention periods as to certain exposure records;

(5) Providing employers complete flexibility in the manner in which records are maintained (except for x-ray films);

(6) Specifying that access must be provided in a "reasonable time, place, and manner;"

(7) Providing employers a reasonable period of time to provide access;

(8) Authorizing the assessment of reasonable administrative costs for repeat requests for copies of records;

(9) Permitting alternatives to full or direct access to medical records if the employee is agreeable;

(10) Assuring protection for certain trade secret information; and

(11) Permitting employers to choose the most desirable means of informing employees of their rights under this rule.

Finally, in considering the economic burdens presented by this rule, it is important not to lose sight of the burdens posed by occupational disease. Occupational disease is extremely costly to our society, both in terms of human impact (premature death, pain and suffering, family anguish, etc.) and purely economic consequences (extended health care costs, increased workers' compensation expenses, lost productivity, absenteeism, larger welfare costs, etc.). The goal of this standard is to enable employees, their representatives, and OSHA to better detect, treat, and prevent occupational disease through access to employee exposure and medical records. By serving to reduce the human and economic impact of occupational disease, this rule will yield substantial benefits which fully justify promulgation of this rule notwithstanding the administrative costs that will be imposed on employers.

VII. Summary and Explanation of the Standard

The final standard is similar in structure and content to the proposed rule, but contains numerous refinements in light of the rulemaking record and the agency's evaluation of it. Significant refinements include: (1) a purpose paragraph to guide application of the standard; (2) more detailed definitions of key terms including the elements of "specific written consent"; (3) an extension of the retention period for basic exposure and medical records along with a reduction in the retention period for certain exposure data; (4) provisions governing the mechanics of access to records including authorizing the employer to charge reasonable fees for multiple requests for copies of records; (5) conditioning the access of all designated representatives to an employee's medical records upon the specific written consent of the employee; (6) permitting an employer's physician to release certain medical data only to a designated representative and not directly to the employee; (7) permitting the deletion of the identity of confidential sources from requested medical records; (8) combining OSHA access to employee medical records with strict administrative regulations; and (9) provisions governing the treatment of trade secret information.

The final standard also differs from the proposal in that NIOSH is not covered by the final rule. NIOSH has independent statutory authority under section 20 of the Act (29 U.S.C. 669) to seek access to records, and furthermore testified that it did not intend to rely upon this final rule to assure its access to necessary records (Tr. 460, 472). OSHA's access to employee medical records is tied to detailed administrative regulations (29 CFR 1913.10) which have been specifically tailored to OSHA's needs and methods of operations. These administrative regulations may in some respects be ill-suited to NIOSH operations. Accordingly, after consultation with NIOSH, the agency decided to exclude NIOSH from the final standard's access provisions.

A. Paragraph (a)—*Purpose*

The "Purpose" paragraph of the final standard creates no substantive requirements, but rather expresses the agency's intentions in promulgating the standard. The proposed rule contained no similar express language. The final rule assures access by employees and their representatives, and codifies OSHA access to relevant employee medical and exposure records. The goal behind access is to yield both direct and indirect improvements in the detection, treatment and prevention of occupational disease. This is articulated as a guide to application and interpretation of the entire standard, and reflects the many ways in which employees, their representatives, and OSHA are likely to use access rights. The Purposes and Need for the Regulation portion of the preamble, III, *supra*, discusses in great detail numerous means by which access to medical and exposure records will yield occupational health benefits. Additional benefits will likely arise from other uses of these records that we have not contemplated.

The "Purpose" paragraph contains several other statements in order to preclude possible misinterpretations of the standard. As with all OSHA regulations, employers are responsible for assuring compliance with the rule. Non-medical management personnel, however, generally have no right to unconsented access to the contents of employee medical records. Concern has been expressed that employers might construe the rule as giving them the right to unconsented access, which medical ethics now denies them (USWA, Ex. 43,

pp. 3–4; Ex. 160, p. 16). To preclude this interpretation, the rule states that "The activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records." It is the agency's expectation that where medical personnel maintain the medical records, they will handle the mechanics of providing access on behalf of the employer. The standard embodies this expectation without attempting to regulate the manner in which employers maintain employee medical records (*See,* Wrenn, Tr. 99–100).

This standard is promulgated against a background of existing legal and ethical obligations concerning the medical-care relationship, especially the maintenance and confidentiality of employee medical information and the duty to disclose information to patients/employees. Legal obligations also exist with respect to trade secret information. These subjects are discussed at length elsewhere in the preamble. To foreclose arguments that OSHA has attempted to preempt existing obligations, the final rule states that "except as expressly provided, nothing in this section is intended to affect" these matters. For example, this standard is in no way intended to diminish the obligation of a physician to inform an employee of a diagnosis of disease immediately. This standard similarly does not override state legal remedies for the abuse of trade secret information.

B. Paragraph (b)—*Scope and application*

The language of this paragraph generally follows that of the proposed rule (43 FR 31374), but has been expanded to better express the intended coverage of the standard. As originally proposed, the final standard applies to general industry, maritime, and construction employers having employees exposed to toxic substances or harmful physical agents. Since the rule seeks to yield benefits in the detection, treatment and prevention of occupational disease, coverage is appropriately limited to records relevant to employees currently or previously exposed to toxic substances or harmful physical agents. The definitions paragraph of the rule (subparagraphs (c)(8) and (c)(11)) defines the phrases "exposure or exposed" and "toxic substance or harmful physical agent." The terms "employee exposure record," "employee medical record," and "analysis using employee exposure or medical records" are also defined in subparagraphs (c)(5), (c)(6), and (c)(2), respectively.

Subparagraph (b)(2) expresses the final standard's application to all relevant exposure, medical, and analysis records whether or not they are related to specific occupational safety and health standards. In so providing, the agency rejected suggestions that there be an exclusion for exposure and medical records created prior to the effective date of the regulation. The agency also rejected arguments that employee medical records could or should be separated into "occupational" and "non-occupational" components, with the standard applying solely to the "occupational" component. Lastly, subparagraph (b)(3) and the phrase "contracts for" in (b)(1) were added to express clearly the agency's intention that the standard apply to records generated or maintained by contractors of the employer as well as by in-house employees.

Before explaining in detail the agency's decisionmaking on these matters in light of the record, it is important to stress that this standard is limited both in its scope and the resulting burdens placed on employers. The standard does not mandate the creation of new records or reports. It does not impose any independent obligation on employers to monitor or measure employee exposures or to provide medical surveillance or examinations. Also, the standard does not establish mandatory requirements as to the format of exposure or medical records. The standard does, however, provide that once employee exposure and medical records are created for any reason, they must be preserved. In addition, persons vitally interested in the contents of these records—employees, their representatives and OSHA—must be provided, upon request, with access to them. This standard is written to assure that access will be consistent with appropriate personal privacy and data confidentiality protections.

The final standard applies to "each general industry, maritime, and construction employer" of employees exposed to toxic substances or harmful physical agents. During the rulemaking proceeding, several participants urged that certain classes of employers, most notably small businesses, and employers with multiple or transient work sites or transient workforces, be entirely excluded from the rule's coverage because of the anticipated excessive administrative and economic burdens of the final rule (Gen. Foods Corp., Ex. 2(99); Lavino Shipping Co., Ex. 2(144), p. 2; Dr. Amdur, Tr. 572; Chamber of Commerce, Tr. 979; So. Cal. Edison Co., Tr. 1575; Crowley Maritime Co., Tr. 1578; Fertilizer Inst., Tr. 2160–61; NAM, Tr. 2177–78; Refractories Inst., Tr. 2216; Steal Plate Fabricators, Tr. 2522). In addition, several participants argued that the rule should not apply to employers who only have safety, as opposed to health, hazards (Steel Plate Fabricators, Tr. 2449; Edison Electric Inst., Ex. 162, pp. 11–12).

Having considered the evidence provided, the agency concluded that there is no rational basis for categorically excluding any broad class of employers from coverage by the final standard. First, as discussed in the feasibility portion of the preamble, VI, *supra,* the agency is confident that the final standard does not impose burdensome or unreasonable administrative and economic costs on any class of employers. Second, the NIOSH National Occupational Hazards Survey (NOHS) documented the fact that exposures to toxic substances occur throughout industry among all types and sizes of employers (Ex. 178; *See also,* testimony of Edison Electric Institute concerning health hazards in the utility industry, Tr. 1917, 1825).

Third, there is no justification for excluding from this rule employees exposed to toxic substances for only a matter of weeks or months as opposed to years. The duration of exposure to a toxic substance may affect the rate of disease incidence, and perhaps the latency period for particular diseases, but the intensity of exposure is equally important. Even short term exposures to toxic substances may be associated with increased risks of chronic disease (as well as the various acute reactions to over-exposure). Research has demonstrated occupationally-related disease in asbestos workers exposed for a matter of months (Ex. 179), and similar results have been obtained for beryllium workers (Ex. 180), for pesticides workers (Ex. 181), for arsenic workers (Ex. 182; *See also,* 43 FR 19587), and for vinyl chloride workers (Ex. 183). It is OSHA's expert judgment that there is no safe level of exposure to a carcinogen; thus any exposure poses some incremental risk of disease (*See,* 29 CFR Part 1990, 45 FR 5002, 5023 (Jan. 22, 1980)). Animal research has, for example, demonstrated chemically-induced neoplasms long after administration of a single dose of vinyl chloride (Ex. 184) or asbestos (Ex. 185).

Although no exclusion from coverage is provided to specific classes of employers due to size, type of business, or nature of workforce, the final standard does exclude employers who have no employees exposed at any time

to toxic substances or harmful physical agents. Furthermore, the final standard only applies to records pertaining to exposed employees, and only to the extent that medical or exposure records exist with respect to these employees. As a result, records of employees who are exposed solely to typical safety hazards (e.g., trips, falls, traumatic injury, etc.) are not covered by this rule.

Subparagraph (b)(2) provides that the final standard applies to records "of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards." Numerous participants argued that this scope was too broad, and that the final standard should be limited to records mandated by specific OSHA standards (AAOM, Ex. 2(101), p. 2; Atlantic Richfield Co., Ex. 2(109), p. 1; Machinery and Allied Products Inst., Ex. 2(119), p. 3; RMA, Ex. 2(123), p. 2; Grumman Corp., Ex. 2(55); Shell Oil Co., Ex. 2(105)). However, limiting the scope of the standard only to those records which are created pursuant to the provisions of specific OSHA standards would clearly deny employees access to important job-related health information, and limit the discovery of previously unknown health hazards (Dr. Wegman, Tr. 220–2; Cal. Medical Ass'n, Tr. 1715–16; Ill. State Medical Society, Tr. 2529).

OSHA's limited resources and the time-consuming nature of the standard-setting process allow for the comprehensive regulation in the foreseeable future of only a very small percentage of the toxic chemicals found in the workplace. Since 1971, OSHA has to date promulgated 24 comprehensive toxic substances regulations, all of which contain records access provisions (29 CFR 1910.1001–.1045). Approximately 400 toxic substances are regulated by 29 CFR 1910.1000, which lacks specific access provisions. NIOSH has issued criteria documents recommending further regulation of some 90 substances or categories of substances (Ex. 169, pp. 1340–41). The 1978 NIOSH Registry of Toxic Effects of Chemicals covers some 33,929 distinct toxic substances (Ex. 169, p. xiii), although many of these substances may not currently be widely used. Approximately 1500 new toxic substances are added to the Registry each quarter (Ex. 169, p. 1362). This final standard has been promulgated to improve the ability of employees and their representatives to detect, treat, and prevent occupational diseases, and especially those associated with non-regulated or under-regulated substances. The greatest benefits of this standard may result from access to information contained in otherwise non-mandated records.

Neither paragraph (b) nor the (c)(6) definition of "employee medical record" makes any distinction between "occupational" and "non-occupational" medical information. The preamble to the proposal explicitly recognized that some information in a medical record might be irrelevant to occupational health concerns, and invited "comments on whether any types of information in the medical records should be excluded from the disclosure requirements of the final rule" (43 FR 31372). Several participants urged that "non-occupational" medical information be excluded from coverage by the final rule (AMRA, Tr. 2454; AAOM, Ex. 2(101), p. 2; VII.C.6, *infra*). As explained further in the discussion of the (c)(6) definition of "employee medical record," OSHA decided that any attempted segregation of "occupational" and "non-occupational" records would be both impractical and unwise. The rulemaking record indicates that physicians do not keep two sets of records and that there exist no reliable criteria by which one type of record could be distinguished in advance from the other. Because the symptoms of occupationally related diseases may be identical to diseases that are non-occupational in origin, it is necessary that the entire records of an exposed employee be available for examination and analysis with appropriate safeguards.

Just as the final standard makes no distinction between "occupational" and "non-occupational" records, no exclusion is provided for "historical records". Several employers argued that the standard should not apply to records created before the effective date of this standard, and certainly not to records created before the OSH Act itself went into effect (Shell Oil Co., Ex. 2(105), p. 3; Mobay Chemical Corp., Ex. 2(97); Nat. Agr. Chemicals Assn., Ex. 2(127), p. 1; NAM, Ex. 2(135), pp. 7–8). Some employers maintained that since these records were generated without the knowledge that they would become disclosable under this rule, they should not now be made disclosable (AISI, Ex. 2(142), pp. 8–9; Borg-Warner Corp., Ex. 2(177), p. 3). This argument complements the view held by some participants that since these records have been generated voluntarily by employers, it is unfair to subject the conscientious employer to the disclosure obligations of this standard, especially since employers who have not undertaken exposure surveillance programs are not so obligated.

This standard, however, is not meant to penalize conscientious employers, but is predicated on the judgment that invaluable exposure and medical records must be shared so as to minimize occupational disease. Employer arguments of unfairness must fail when balanced against the fact that continued secrecy will substantially impair the ability of workers, their representatives, and OSHA to detect, treat and prevent occupational disease. Due to the typically long latency periods associated with occupational disease (*See*, VII.D, Preservation of records, *infra*), even very old medical and exposure records can be vitally important to the interpretation of diseases which occur today. For example, thirty year old exposure records can suggest or refute a particular etiology for a disease, thereby dictating appropriate medical treatment. Similarly, a medical record that old may contain irreplaceable baseline health data on an individual to which current health status can be compared. The value of historical records for research purposes is self-evident. Indeed, our ability to interpret disease patterns today is often frustrated by the lack of prior exposure data and such medical data as prior medical histories, smoking habits, and baseline physiological data. The exclusion of "historical" records from coverage by this rule could delay for another 20 or 30 years the positive impact of this standard on the detection of occupational disease. Since medical and exposure records are invaluable regardless of when created, the final standard contains no exclusion for "historical" records.

The American Petroleum Institute (API) in part opposed employee access to historical exposure records on the grounds that these records are usually not meaningful to employees and may often be misunderstood (Ex. 158, pp. 30–31). OSHA disagrees with these statements. Section III of the preamble discusses in detail the numerous ways in which employees and their representatives are expected to make good use of this data, and section IV.E responds to arguments of potential misinterpretation. In making exposure data available to employees, employers are not prevented by this rule from explaining historical data to their employees. That is the appropriate response to potential misinterpretation. API further testified that data not collected with research in mind rarely provides useful information concerning an individual's exposure (Ex. 158, pp. 30–31). Dr. Joel Swartz testified in rebuttal that historical records are

indeed useful in assisting researchers in reconstructing the exposure history of an employee. Even partial or incomplete data "could still be very useful in showing that people were exposed as compared to not being exposed at all" (Tr. 2376). Similarly, Dr. Wegman stated that "all past data should be available; that is, not only data which is specifically prescribed by OSHA, but any health data which could conceivably lead to developing appropriate research conclusions from appropriately designed research data" (Tr. 207). If nothing else, historical records will reveal the identity of chemicals to which employees were exposed.

Lastly, OSHA agrees with the observation of Peter Weiner as to arguments for excluding records predating the OSH Act that "the term 'pre-Act' is misleading; these are presently maintained records, even though they contain records of past exposure" (Ex. 9A, p. 21). In addition, many of these "historical" records may have been created by employers prior to 1970 in order to monitor compliance with mandatory Federal occupational safety and health laws such as the Walsh-Healy Public Contracts Act (41 U.S.C. 35–45; *See*, 41 CFR 50–204.1–205.10; s4(b)(2) of the Act, 29 U.S.C. 653(b)(2)). Irrespective of this possibility, the data base of occupational health information which already exists should be made available immediately to those most directly concerned with the relationship between work and disease. To require waiting twenty or thirty years to partially recreate this data base would be unconscionable. The public health value of this information overrides all arguments that the continued secrecy of "historical" records is appropriate.

The final standard applies to each employer who "makes, maintains, contracts for, or has access to" exposure or medical records. The preamble to the proposed rule best expresses the agency's intention that the final rule be given a broad application in this respect:

> To come within the scope of this . . . rule, the records do not have to be within the employer's physical control as long as the employer has access to them. The concept of employer access encompasses situations in which any of the employer's officers, employees, agents, or contractors (including the corporate medical department) has physical control or access to records, even though they are not generally available to all officers, employees, agents, and contractors. (43 FR 31372)

Subparagraph (b)(3) and the phrase "contracts for" in (b)(1) were added to clearly express the agency's intent that the final standard apply to records generated or maintained by contractors, including records generated on a fee-for-service basis. Although the preamble to the proposal (41 FR 31372 (July 21, 1978)) and OSHA official Grover Wrenn's testimony at the outset of the hearings (Tr. 24–25) explicitly stated this intent, subparagraph (b)(3) and the phrase "contract for" in (b)(1) were added to the final standard to avoid any possible ambiguity (*See*, International Chemical Workers' Union, Ex. 28, p. 6; Weiner, Ex. 9A, p. 28). Coverage of contractor generated or maintained records is crucial since the hearing record indicates that many industrial medical services are performed through contractual arrangements, rather than done in-house by persons employed exclusively by the employer (Southern Gas Assn., Ex. 2(67); Cyanamid Co., Ex. 2(102), pp. 1–2; Dr. Wegman, Tr. 216–17; Chamber of Commerce, Tr. 981; AOMA, Tr. 1531; California Occupational Health Nurses, Tr. 1721; USWA, Ex. 160, p. 16; California Department of Industrial Relations, Ex. 2(132), p. 2; Mechanical Contractors Ass'n., Ex. 2(157)). To exempt contractor generated or maintained records from the final standard would deprive substantial numbers of workers of the benefits of this rule, and would also create a simple vehicle by which employers could in the future evade their obligations.

Subparagraph (b)(3) also provides that "Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which records are made or maintained." This provision is intended to explicitly put employers on notice that, where necessary, relationships must be modified or created anew in order to assure that this rule is complied with. OSHA thus intends to provide employers maximum flexibility while at the same time emphasizing employer responsibility to assure compliance with the rule (*See*, Weiner, Ex. 9A, pp. 28–29).

A significant remaining matter is the final standard's exclusion of agricultural employers. The preamble to the proposed rule stated that it would apply to each employer in general industry, maritime, and construction who makes, maintains, or has access to employee exposure or medical records (43 FR 31372). Agricultural employers were implicitly excluded. The Migrant Legal Action Program, Inc., (MLAP) (Ex. 154) and the Health Research Group (HRG) (TR. 2032–4; Ex. 161) argued that agricultural workers should be included within the scope of the final rule, since there is no rational basis for not doing so. MLAP stated that "the burden on the agricultural employer would be no greater than it would be for any other employer," while "the value of the regulation for farmworkers would be great." (Ex. 154, p. 2). The AFL–CIO also supported this position (Ex. 152, p. 32).

Both MLAP and HRG observed that agricultural employment is one of the most hazardous occupations:

> Nationwide, in 1977, there were an estimated 1800 accidental work-related deaths in agriculture. Fourteen percent (14%) of all work-related deaths occur in agriculture, and the annual death rate in agriculture is 53 per 100,000 workers. In 1977 one of 20 farmworkers suffered a disabling injury. This makes agriculture the third most hazardous industry in the United States, surpassed only by construction and mining/quarrying. (MLAP, Ex. 154, p. 1)

HRG noted that farmworkers are often exposed to extremely toxic substances such as the many pesticides in current usage (Tr. 2033). HRG also stated:

> Rarely if ever do farmworkers know the nature or extent of these exposures. And if a farmworker were to ask a labor contractor or grower for records which shed light on those exposures, the records would likely be destroyed and the farmworkers fired.
>
> Without rules requiring agricultural employers to retain and disclose exposure and medical records, farmworkers will surely be denied the right to know about health hazards in their workplaces. (HRG. Tr. 2033)

MLAP further stated that the need for farmworker access to exposure and medical information is reinforced by the limited resources of OSHA to inspect agricultural worksites (Ex. 154, p. 2, 3).

OSHA finds MLAP's and HRG's comments to be persuasive. However, since the proposed rule implicitly excluded agricultural employers from coverage, and these employers did not participate in the proceedings, OSHA believes that a further comment period is appropriate before extending the scope of this standard. Accordingly, this final rule is being simultaneouly published as a proposed rule with regard to agricultural employers. The evidence provided during the comment period, in addition to the evidence gathered in this proceeding will be evaluated in determining whether to extend the scope of this standard to agriculture operations.

As a final matter, the agency would like to stress that the limited nature of this standard is not intended to detract from the potential occupational health importance of other information created or maintained by employers. This rule is limited in scope to available medical and exposure records, but other exisiting information may have

significance and the prevention of disease will at times require the creation of new records. Accordingly, OSHA compliance efforts, and public health activities of other agencies such as NIOSH, will at times necessitate access to records other than those covered by this standard. This rule is not intended to limit OSHA's or any other agency's authority to seek access to such employer information in particular circumstances.

C. Paragraph (c)— *Definitions*

1. *"Access."* The proposed rule used the term "access" in the sense of a right and opportunity to examine and copy records (43 FR 31373–74). The final standard makes this explicit in subparagraph (c)(1). Paragraph (e), Access to Records, governs the specifics of how access rights may be exercised.

2. *"Analysis using exposure or medical records."* The proposed rule defined "employee exposure record" and "employee medical record" as including "general research or statistical studies based on information collected from" either of these forms of individual records (43 FR 31372, 31374). The final standard removes studies from the definition of individual records, and creates a separate definition—"analysis using exposure or medical records." This change was made for four reasons. First, based on the manner in which exposure and medical records are created and maintained, it strains normal meaning to speak of an individual record as encompassing an aggregation of data from numerous records. Second, the phrase "general research or statistical studies" was correctly viewed as overly vague (AFL–CIO, Ex. 152, p. 39); thus there was a need to express the agency's intentions better. Third, subparagraph (e)(2)(iii) provides that analyses without personally identifiable information must be made available, upon request, to workers, collective bargaining representatives, and other designated representatives without requiring them to obtain the specific written consent of the individual subjects whose records underlie the analyses. Since these analyses should not be viewed as traditional medical records, the final rule created a separate definition (*See*, Deere & Co., Ex. 2(84), p. 2). Fourth, the final standard exempts purely preliminary work on analyses of records from the access requirements, and this was most easily accomplished by specifically defining what is meant by analyses based on individual records.

The term "analysis using exposure or medical records" is defined as "any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records, or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis." This definition refines the proposal in several respects. The phrase "any compilation of data, or any research, statistical or other study" more clearly expresses the intention to cover all situations where an employer evaluates or compiles exposure and/or medical data. Charts, graphs, tables, industrial hygiene surveys, evaluations of disease experience, and other summaries and evaluations are covered by this definition (*See*, AFL–CIO, Ex. 39, p. 5, Ex. 152, p. 39; ICWU, Ex. 28, p. 13, Tr. 758–59; OCAW, Tr. 702; UAW, Ex. 35, pp. 11–12). Analyses "based at least in part on . . . information collected from health insurance claims records" were included since studies of the utilization of medical services covered by health insurance may reveal patterns of occupational disease. These analyses based on insurance claims records are covered by the final standard even though the individual records upon which the analyses were based may be held by an insurance company or otherwise not treated as employee medical records (and thus not subject to the access or preservation requirements of this rule).

The phrase, "provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis," has been added in response to employer concerns that premature access to studies could be misleading and hinder research. OSHA recognizes that researchers may go through several early revisions and drafts in the review and analysis of data and that this process deserves some insulation from close scrutiny. However, once the analysis has been sufficiently completed as to be reported to the employer—i.e., to someone in management beyond those individuals immediately involved in preparing the analysis—then the analysis should be accessible to workers, to their representatives, and to OSHA. Similarily, the analysis should be accessible if the persons preparing it have stopped working on the analysis even though no detailed report has been made to management. The wording of the definition also responds to concerns that providing access only to "final" studies could invite evasion through the devices of labeling analyses as "draft" or by purging earlier drafts of unfavorable findings. The language adopted should minimize these results while precluding premature access to ongoing studies and analyses.

3. *"Designated Representative."* The preamble to the proposed rule discussed the term "designated representative" as follows:

> This proposal does not provide a limiting definition of "designated representative." Rather, a designated representative could be anyone to whom an employee has given written permission to act on his or her behalf to obtain direct access to his or her records. For instance, a collective bargaining agent, physician, attorney, family member, fellow employee, or anyone else, could be a designated representative, provided the necessary consent were obtained. Access to employee exposure records and medical records by designated representatives is necessary so they can assist the employees they represent in making effective use of their records and in securing their rights under the OSHA Act. (43 FR 31373)

The final standard on subparagraph (c)(3) makes this explicit. Designated representatives include "any individual or organization to whom an employee gives written authorization to exercise a right of access." The final rule contains no rigid criteria as to what this written authorization must say. Any written statement which is signed and indicates that the designated representative is authorized to exercise the employee's right of access will suffice. The rule also singles out "a recognized or certified collective bargaining agent" as included within this (c)(3) definition for the purposes of access to employee exposure records and analyses using exposure or medical records. A "recognized or certified collective bargaining agent" is a labor union which has legal status under the National Labor Relations Act (29 U.S.C. 151 *et seq.*) as the exclusive agent for a particular collective bargaining unit.

OSHA believes that enabling an employee to designate anybody he or she desires to entrust with the access rights of this rule will most effectively achieve the purposes of the Act and this standard. At the same time, recognized or certified collective bargaining agents, who have the statutory authority to represent the enterests of employees within the bargaining unit on health and safety matters, are automatically considered to be "designated representatives" by virtue of their special bargaining status. Under the rule, this gives them the right of access to employee exposure records and analyses using exposure or medical records without individual employee consent. However, like any other

designated representatives, collective bargaining agents must have the specific written consent of an employee to get access to an employee's medical record.

4. "*Employee*." The term "employee" has a statutory definition (s3(6) of the Act, 29 U.S.C. 652(3)(6)) which governs this rule, but the final standard contains language to clarify the intended coverage. The proposed rule guaranteed access rights to former employees (43 FR 31374). The final rule makes this explicit in the definition of "employee" so as to avoid repetitive use of the phrase "and former employees" each time the standard created a right of access. Former employees have needs of access to records relevant to their current or future health status as compelling as the needs of current employees; thus the final rule makes no distinction between former and current employees.

The proposed rule also covered "exposure records of past and potential exposures" (*Id.*). The phrase "potential exposures" was the source of some concern, since it appeared to expand the class of employees who would be given access rights without clearly delimiting who they were (MCA, Ex. 2(125), p. 11; Rubber Mfgr. Assn., Ex. 2(128), p. 3; Dresser Industries, Inc., Ex. 2(130), p. 7; Beckman Instruments, Inc., Ex. 2A(6), p. 2; EEI, Ex. 2A(36), pp. 24–25). The final standard better expresses OSHA's intent by defining "employee" as including "an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents." Mere job applicants and employees with only hypothetical future exposure are thus not entitled to any rights under this rule, but employees who are being offered or assigned to new jobs involving exposure to toxic substances or harmful physical agents are covered by the standard (*See*, Dr. Wegman, Tr. 202).

At the suggestion of the Xerox Corp., the final rule also contains language assuring that the legal representative of a deceased or legally encapacitated employee may exercise rights under this rule (Xerox Corp., Ex. 2(136), p. 2). OSHA believes that the goals of the Act are well served by facilitating attempts by such legal representatives to ascertain whether the deceased or legallly incapacitated employee was a victim of occupational disease, and to assist health research in discovering the causes of occupational disease. The records of deceased and incapacitated workers are obviously relevant to occupational health research. Therefore, the rule explicitly applies to records relevant to deceased and legally incapacitated employees.

5. "*Employee exposure record.*" The proposed rule defined this term as meaning "a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents" (43 FR 31373). The preamble to the proposal explained as follows:

> These records would include determinations of airborne concentrations of chemicals to which an employee is exposed, or would be exposed if not wearing a respirator. They would also include determinations of physical agents within the workplace environment which might impair an employee's health or functional capacity, for example, records of heat, noise, radiation, vibration, or hypo- or hyperbaric (i.e. nonatmospheric) pressure. Records of area sampling of workplace contaminant levels and representative or random employee sampling are covered by this definition. If a record contains information which is useful to determine employee exposure, the record would be covered by this rule even though the record was not created for occupational health purposes. (43 FR 31372)

This generalized definition, particularly the phrase "qualitative or quantitative information" gave rise to considerable discussion and debate during the rulemaking proceeding. In light of the record, the agency decided to specify more precisely the information covered by the final standard (*See*, Electronic Industries Assn., Ex. 2(93); Union Carbide Corp., Ex. 2(104), p. 1; Fla. Agricultural Research Inst., Ex. 2A(19), pp. 1–2). The language adopted focuses on the major issues raised during the proceeding, particularly sampling methodologies, calculations, background data, biological monitoring tests, and the types of other "qualitative and quantitative" information of greatest importance.

Subparagraph (c)(5)(i) covers "environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained." There was little disagreement that classical industrial hygiene monitoring or measurement results should be covered by the rule. The phrase "including personal, area, grab, wipe, or other form of sampling" was added to ensure that all forms of industrial hygiene sampling were embraced (Ex. 186). As expressed by OSHA official Grover Wrenn, the intention is to encompass data which "in any way characterizes the environment in which workers are working" (Tr. 89).

The issue of collection and analytical methodologies, calculations, and other background data was a matter subject to considerable difference of opinion. Some industry witnesses argued that complete background data and calculations should not be covered by this standard due to their possible misinterpretation by the employee (API, Ex. 158, p. 30–2). Since this kind of information can be voluminous, it was also stated that its inclusion within the definition of "employee exposure record" would be particularly burdensome (SOCMA, Tr. 523; DuPont, Ex. 12, p. 10). In contrast, there was testimony from the unions and others that such data would be useful over and above the basic results of monitoring and measuring and should be included within the "employee exposure record" definition.

> While it is true that some data contained in underlying calculations and laboratory notebooks might not be of great interest to workers (i.e. the carrier gas or temperature reading of a gas chromatograph), some information would be of direct interest and use. For example, the time over which a sample was taken, the date and the number of readings constitute information readily understood by workers and important to the interpretation of exposure readings. While a worker on the shop floor may not know (or care to know) the difference between a midget impinger or an activated charcoal absorbant, he or she can determine if measurements were taken during down time or reflect true exposure. Moreover, representatives of workers trained in industrial hygiene are fully capable of interpreting and utilizing technical documentation of exposure measurements (Tr. 891, 1165, 1167, 1194 (USWA)). (AFL–CIO, Ex. 152, p. 41)
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> A minicourse in medical science or industrial hygiene is not required for the ordinary worker, who is concerned principally with his or her own exposure readings. On the other hand, an industrial hygienist employed by a union would find the underlying data and calculations essential for the purpose of verifying the results obtained by the employer. (Weiner, Ex. 9A, p. 22).

In light of the record and the agency's expertise in industrial hygiene matters, OSHA concluded that the final standard should apply to collection and analytical methodologies, calculations and background data. The approach chosen by the final rule is to assure access to both the sampling results and information relevant to interpretation of the results. Sampling results often will be less meaningful unless one knows precisely where the sampling was done, at what time of day, for what period of time, and under what working conditions. The collection plan or methodology will provide this data. Analytical methodologies and mathematical calculation methods may

be of considerable importance to verify the statistical significance and accuracy of the results obtained. As Mr. Weiner and the AFL–CIO noted, some of these matters will be easily appreciated by workers; others will at times require evaluation by industrial hygienists. Subparagraph (d)(1)(ii) provides reduced retention requirements for some of this information, but subparagraph (c)(5)(i) appropriately includes it within the definition of "employee exposure record." In addition, the definition does not cover all sampling methodology, calculation and other background data, but only that information "relevant to interpretation of the results obtained." A rule of reason is intended to apply as dictated by sound industrial hygiene practice.

The next major issue concerns biological monitoring tests. Numerous participants urged that the final standard define "exposure records" as including biological minitoring results, but little comment was directed towards specifying which tests should be covered (Lovejoy, Ex. 2(90); Dr. Johnson (MCA), Tr. 417; Weiner, Ex. 9A, p. 24, Tr. 166–67, 195; Taylor (AFL–CIO), Tr. 636; AFL–CIO, Ex. 152, pp. 41–42; Eller (ICWU), Tr. 751; USWA, Ex. 160, pp. 21–22, Tr. 900; Dr. Parkinson, Tr. 1146–47). Biological monitoring tests involve the evaluation of a body system (e.g., pulmonary function) or a body fluid or tissue (e.g., blood, urine, breath, sputum, hair, fingernails). These tests generally measure either the fact or level of absorption of a substance (e.g., blood lead level), or the physiological or biochemical status of some body system (e.g., the efficiency with which the kidney is filtering the blood as reflected in the urinalysis or in the serum creatinine or blood urea nitrogen).

The final standard treats certain biological monitoring results as exposure records, but only those tests which "directly assess the absorption of a substance or agent by a body system." This limited coverage is consistent with comments made by Dr. Silverstein of the UAW:

> We believe, in general, that in the absence of written consent an employee should not have access to the medical records of fellow employees, even if those with related or comparable exposures. Reasonable exceptions to this guideline are necessary, however, for the unique and relatively infrequent situations that a piece of information has as much the characteristic of an industrial hygiene test result as a private medical test result. For example, the results of a biological monitoring test, like a blood lead analysis, often tell as much about the plant environment as the health of the individual. The availability of blood-lead tests results may be crucially important data to the fellow worker, the union representative or the industrial hygienist, who is trying to judge the extent of hazard and to design control mechanisms. (Ex. 63, pp. 10–11).

Several biological tests are currently used to assess directly whether and to what extent a worker has absorbed a toxic substance. Tests such as blood lead level, urine mercury, urine phenols, urine monoacetylbenzidine, exhaled carbon monoxide (USWA, Ex. 160, pp. 21–22), and hair or fingernail assays for arsenic are illustrative. These tests may be a valuable complement to traditional industrial hygiene personal sampling, since the actual absorption is measured rather than mere breathing zone exposure. Since these tests predominantly measure absorption as opposed to the biological effect of the absorption, the worker's unique health status is not directly assessed. The worker's unique physiology or metabolism may influence the level of absorption, but generally this cannot be assessed by examination of the biological monitoring result by itself. Furthermore, these kinds of biological monitoring tests have not traditionally been afforded the privacy protections given to medical records (Wrenn, Tr. 53–55; USWA, Ex. 160, pp. 21–22).

From the foregoing considerations, the agency, in defining "exposure record," included biological monitoring tests of absorption, but explicitly excluded tests which assess "the biological effect of a substance or agent." These latter tests, such as lung function, sputum cytology, male fertility tests (sperm number, motility, and morphology), kidney function tests (e.g., blood urea nitrogen, and serum creatinine), and hemoglobin levels, merit the privacy protection afforded to other medical information. These tests more directly measure some aspect of an individual's unique health status, and may reveal health problems caused by non-occupational factors. Accordingly, the final rule treats these biological monitoring results as medical records rather than exposure records.

The remaining issue concerns what if any additional kinds of quantitative or qualitative information should be included within the definition of "employee exposure record." The final standard includes two kinds of information. First, "Material safety data sheets" are included within the definition of "employee exposure record." Typically, these sheets contain information on the identity of the chemical, its physical characteristics, its known toxic properties, some of its possible health effects, and proper handling procedures. Several participants urged that access to these records be assured (United Paperworkers International Union, Tr. 940–41; AFL–CIO Industrial Union Department, Tr. 947–48, 962–63; AFL–CIO, Ex. 152, p. 40). As noted by the Paperworkers Union, access to these data sheets "would at least give some idea of what, if not how much, workers are being exposed to" (Tr. 940).

Finally, the definition of "employee exposure record" includes "any other record which reveals the identity (chemical, common, or trade name) of a toxic substance or harmful physical agent". Coverage of this last kind of record, however, only arises in situations where no other type of exposure record exists for the particular toxic substance or harmful physical agent (i.e., environmental monitoring, biological monitoring, or material safety data sheets). An example of this kind of exposure record would be a detailed manual concerning toxic substances which some employers develop for the benefit of their employees (Panhandle Eastern Pipeline Co., Ex. 51; Truckline Gas Co., Ex. 2(153), p. 1). Dr. Teitelbaum also pointed out that in the absence of other kinds of exposure records, a simple purchase record might reveal the nature of an employee's exposure (Tr. 134). These kinds of records are covered to the limited extent that the identity of the substance or agent is revealed—i.e., either its chemical, common, or trade name. Subparagraph (d)(1)(ii) provides that these fall-back 'qualitative' exposure records need not be retained for any period of time so long as some record is maintained of the identity (chemical name if known) of the substance or agent used, where it was used, and when it was used. The final standard, however, is founded on the judgment that access to these records is appropriate where no alternative means exists to identify what toxic substances or harmful physical agents employees are exposed to (*See*, NJCOSH, Ex. 2(58), Attach., p. 1).

It is appropriate to stress that OSHA defined "employee exposure record" so as to make the most important information available to employees and their representatives at a minimal burden to employers. Several participants argued that other forms of information should be included in the standard; e.g., system design information, engineering tests, and mechanical ventilation measurements (Weiner, Ex. 9A, pp. 20–21), and personnel records (NIOSH, Ex. 16, p. 5). These and other forms of information may well have occupational health importance and this rule is not meant to imply otherwise. Further rulemakings may cover other kinds of data. For the

time being, however, OSHA has declined to expand the scope of this final rule to encompass all types of employer-held information of possible relevance to occupational safety and health matters.

6. *"Employee medical record."* The definition contained in the final standard is similar to that of the proposal (43 FR 31374), but has been refined in light of the record. First, the final rule applies to information concerning an employee's health status which "is made or maintained by" medical personnel. Information generated by medical personnel should be accessible irrespective of how and where the information is presently maintained. The use of "made" is intended to assure access in situations where medical information is held by non-medical management departments or personnel. The use of "maintained by" medical personnel is intended to assure access to the entire contents of medical files, not just to information created by medical personnel. Once information from any source gains enough importance to be included in the medical file, that information becomes subject to the retention and access provisions of this rule.

The final standard also applies to health status information made or maintained by a "technician." This is meant to cover the results of situations where, for example, occupational health questionnaires or biological monitoring tests such as pulmonary function or audiometric testing are conducted by persons who, stricyly speaking, may not be considered as health care personnel. Records from these tests might not be made a part of the formal medical program; thus the final rule includes "technician" in the definition of "employee medical record" to assure that these health status records are covered.

An important effect of the phrase "is made or maintained by" is to exempt certain information from this rule. Miscellaneous personnel file and other information peripherally related to an employee's health status, but never included in the employee's medical file nor created by health care personnel or a technician, are excluded. Another example of information exempted would be minor injury statistics not made a part of the employee's medical file. (All employees are already entitled to access to illness and injury statistics required to be kept by 29 CFR Part 1904).

The final standard lists five categories of information explicitly treated as part of an employee medical record, all of which were mentioned in the preamble to the proposed standard (43 FR 31372). These five categories are not meant to be all-inclusive, but represent the types of information most likely to be found in a medical record and most relevant to occupational health issues. All health status information must be made accessible, however, limited only by the "made or maintained by" medical personnel or technician qualification. The wide variety of information that could be contained in employee medical records was discussed by numerous participants (*See*, Dr. Robinson, Ex. 2(95), pp. 1–3; Dr. Teitelbaum Tr. 143; Dr. Whorton, Ex. 11, pp. 4–5; Weiner, Ex. 9A, pp. 27–28; Samuels (AFL–CIO IUD), Tr. 973).

As just noted, the final standard broadly defines "employee medical record." During the rulemaking proceeding, discussion on the definition of "employee medical record" centered on whether a meaningful distinction could be made between 'occupational' and 'non-occupational' information. The preamble to the proposed rule noted that some medical information could be irrelevant to occupational health issues, and solicited information on what, if anything, should be excluded from coverage by the rule (43 FR 31372).

Several participants, who endorsed explicit exclusion of 'non-occupational' information, stated that medical records compiled by occupational physicians may contain data unrelated to workplace exposures, such as family problems, abortions, venereal disease, emotional and mental illness problems, and drug or alcohol abuse (Nat. Steel Co., Tr. 1978; DuPont Co., Ex. 12, p. 4; API, Ex. 66B, p. 3). It was even estimated that perhaps "only about 10 percent of employee consultations concern medical problems clearly defined as industrial injuries or illnesses" (API, Ex. 66B, p. 3). Other comments included:

> We recognized and agree that employees should have access to information about their occupational exposures and the condition of their health. We also recognize the need for OSHA and NIOSH to require certain exposure and medical records be kept and be available to OSHA and NIOSH. But it is unreasonable for OSHA to request *all* information contained in employee medical records be available to employees, their representatives, and Federal agencies. A medical record contains a variable amount of information because it is a record of an individual. Often there is very sensitive and personal information and sometimes employees don't know or don't remember just what is in the record. Much information in the record is not of valid interest to OSHA, NIOSH, or employee representatives. (AAOM, Ex. 2(101), p. 2)
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> We believe that only information related to conditions or hazards of the workplace constitute legitimate, pertinent information under these regulations, and that all other information relating to the employee's medical condition or communication with his physician should not be released from the employee medical record. (AMRA, Tr. 2454)

OSHA agrees that in particular situations some medical information may have no relevance to occupationally-related health problems. No general exclusion has been created, however, because the record indicates that such an exclusion would be impossible to define properly. The record indicates that the symptoms of occupational disease often closely mimic those of non-occupational diseases. The human body is limited in the number of ways it can react to chemical insults, and many of these responses parallel symptoms associated with a variety of other insults and disorders. The record makes it clear that occupational exposure to toxic substances can result in practically every form of apparent "non-occupational" health problem, including personality change, psychiatric disorder, minor cuts, falls, or bruises, dizziness, headache, reproductive disorders, common cold, flu or stomach-ache. This, plus our limited knowledge of occupational disease, makes it impossible to classify in advance what pieces of information may or may not be of "occupational" significance. Furthermore, even information concerning genuine non-occupational health problems may have later significance in assessing occupational health issues. For example, full understanding of an employee's pre-employment medical problems could possibly avoid unnecessary suspicion and investigation of a chemical where prior health problems recur. Numerous participants discussed these factors at length (Illinois Bell Co., Ex. 2(56); ACGIH, Ex. 2A(25), p. 3; Dr. Karrh (DuPont), Tr. 354–5; Dr. Johnson (MCA), Tr. 427; Dr. Teitelbaum, Tr. 120, 145–148; Dr. Wegman, Tr. 207–08, 211–14; Dr. Whorton, Tr. 304–05; Dr. Silverstein (UAW), Tr. 2025–26; Weiner, Tr. 171–73; AFL–CIO, Ex. 152, pp. 36–39).

On the basis of the foregoing, OSHA concluded that there is no sound way to exclude on an *a priori* basis any form of "non-occupational" information from this standard. In addition, permitting any form of "non-occupational" information exclusion could easily prove to be counterproductive. This rule's access provisions are designed to facilitate the detection of previously unrecognized occupational health problems; thus the broadest possible access with appropriate safeguards must

be provided or important information could be lost. As Dr. Wegman stated:

> . . . [I]f the associations are there it is our job to find them, and we must use any available medical records to find them. We cannot simply use records which are prescribed ahead of time as being associated with certain work exposures. Mostly the occupational diseases which exist are undescribed, and it is very difficult for us to predict what material in the medical record is going to be useful in determining new occupational diseases. (Tr. 207–08)
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> I think the issue we in the research end of this profession need to address is what are the variety of symptoms associated with the variety of occupational exposures. Every single one of them can be, and if we don't maintain an open mind about that, we are going to close off certain series of occupationally related diseases. (Tr. 214)

Dr. Wegman further described in detail how easily even a broad pattern of occupationally related urinary dysfunction could go unrecognized (Tr. 220–22). The final rule contains no exclusion for "non-occupational" medical information in order to maximize the possibility that currently unrecognized occupational disease will be detected.

The record indicates that providing access to an employee's entire medical file will not prove to be burdensome, since existing recordkeeping practice has generally been to maintain both personal and job-related information in a single medical file (Dr. Whorton, Tr. 304; Dr. Spraul (Monsanto), Tr. 1909; Dr. Bernacki (NAM), Tr. 2186). Thus, Dr. Robert Hilker, past president of the AOMA, testified:

> [The AOMA] believe(s) that records should not be segregated. We believe that to practice good medicine, it is necessary to have a contemporary running record in order to evolve the thought process to decide what is happening to this patient. And when you separate them you deprive yourself of a lot of information that you need to arrive at a diagnosis and a possible cause, a possible occupational exposure, if you will. (Tr. 2529)

Dr. Givens of the California Medical Association provided similar testimony on recordkeeping practices:

> Using the DBCP sterility case as an example, it would seem that such a dual system might at times allow for the erroneous separation of medical data, leading possibly to unforeseen tragic consequences. (Tr. 1716)

Although no exemption is provided for "non-occupational" information, the final rule does specifically exclude three kinds of information from the definition of "employee medical record": certain physical specimens, certain records concerning health insurance claims, and certain records concerning voluntary employee assistance programs. First, OSHA does not desire to alter in any way existing medical practices as to the retention of physical specimens (e.g., blood or urine samples). In general, physical specimens are discarded after having been analyzed. There are exceptions to this, however, such as peripheral blood smears and permanent sputum cytology slides required under specific occupational safety and health standards (*See*, 29 CFR 1910.1029(j)(2)(vii) (coke oven emissions); 29 CFR 1910.1028(i)(2)(i)(*b*) (benzene), *vacated, API v. Marshall*, 581 F.2d 493 (5th Cir. 1978, *cert. granted*, 440 U.S. 906 (1979). Since there was some confusion as to the standard's application to physical specimens, the agency decided the best solution was to explicitly exclude physical specimens from the rule (*See*, Wrenn, Tr. 36–37). The final rule excludes from the definition of "employee medical record" physical specimens "which are routinely discarded as a part of normal medical practice, and are not required to be maintained by other legal requirements." Of course, the written results obtained from examining specimens are covered by the definition of "employee medical record."

Next, "records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.)" are excluded from the final standard's definition of "employee medical record." Health insurance records are routinely generated in industry. These are often medical records created by a Health Maintenance Organization (HMO) or by the employee's private physician, although the employer may have access to the information in aggregate or individual form due to an "interest in claims administration." In "Dilemma: A Report of the National Conference on Health Records," published and submitted into the record by NCCHR, it was noted that:

> This structure of group insurance plans varies considerably from one employer to another. In some plans, the insurance company handles claims administration, and the employer receives only utilization data (sometimes in individually identifiable form), in others the employer virtually insures itself, and the insurance company plays little if any part in administering the plan. (Ex. 58, p. 33)

This report also indicated that group insurance claims in the industrial setting are normally handled by personnel departments rather than the medical department, and that such submitted claims may be screened by management on the way to the insurer (NCCHR, Ex. 58, p. 32). George Becker, of the United Steelworkers Union, further stated:

> . . . I[n] many small plants, the monitoring of group insurance is a clerical rather than a medical function. The clerk in charge as a matter of course checks with the employee's supervisor on any questions on a group claim.
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> Often the employee's immediate supervisor is the one who determines the entitlement to sick and accident benefits and the duration of the sick and accident benefit. (Tr. 2387)

Recommendations were made by several employers to exclude insurance claims records from the definition of "employee medical record" (Steel Plate Fabricators, Tr. 2501; Dresser Ind., Ex. 2(130), p. 7; Biscuit and Cracker Mfgrs., Ex. 2(140), p. 3; Motorola Corp., Ex. 2A(26)). The final standard in part follows these recommendations. If the health insurance claims records are kept separate from medical program records and "not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.)," then they are not treated as employee medical records. If, however, employee health insurance records are either integrated into medical program records or can otherwise be retrieved by the employer by direct personal identifier, then they are treated as employee medical records for the purpose of the access provisions of the rule (VII.E, *infra*), but not for the purpose of the preservation provisions of the rule (VII.D, *infra*). Access to identifiable insurance claims records containing health status information is appropriate for the same reasons applicable to employer-generated medical records—the employee health status information may be highly relevant to the detection, treatment, and prevention of occupational disease. OSHA does not believe, however, that it is appropriate to require long term preservation of all health insurance records maintained outside the context of an employer's medical program. The final rule thus establishes no preservation requirements as to these records. However, as discussed earlier, analyses based on insurance claims records are subject to both the access and preservation requirements of this standard.

The final exclusion from the definition of "employee medical record" concerns "records of voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs), if maintained separately from the employer's medical program and its records." Representatives of the Edison Electric Institute (EEI) took the lead in arguing that records of employee assistance programs should be exempt

from the scope of this rule (Ex. 2A(36), pp. 12–13). In its words:

> The Edison Electric Institute, almost exclusively among the participants at the hearings, raised substantial objections to the mandatory disclosure of records generated by employee assistance programs. These programs are operated on a voluntary basis by employers to assist their employees with personal problems such as alcoholism, drug abuse, psychological, marital and legal difficulties. OSHA's regulation, as proposed, would subject records generated in such programs to the same disclosure requirements contemplated for other employee records. The record evidence before OSHA demonstrates that even the possibility of such disclosures would chill employees' participation in such programs, create risks for third parties who provide confidential information about employees involved, and perhaps destroy the effectiveness of these programs which are so worthwhile. (Ex. 162, p. 13)

In addition to the testimony on the need for confidentiality (Tr. 1778–9) and the strict confidentiality policies that have been adopted as part of these programs (Tr. 1779, 1787, 1791–2), the EEI representatives indicated that these programs are often administered completely outside the medical program by clinical psychologists or counselors, and even when they are part of a medical program, the records are kept strictly separate from the medical records (Tr. 1785–6). Even the contract physician must have the consent of the employee to get access to them (Tr. 1786–7). (*See also*, Taylor (AFL–CIO), Tr. 648–55; Dr. Teitelbaum, Tr. 140–142).

On the basis of the foregoing, OSHA decided that records pertaining to voluntary employee assistance programs are apt to have limited significance to occupational health matters when these programs are structured and operated outside of the context of the employer's medical program. Application of this standard to these voluntary assistance programs would likely yield little benefits though imposing unnecessary burdens on employers. Accordingly, the final rule exempts the records of these programs from the definition of "employee medical record," but only to the extent that the records of these programs are maintained apart from the employer's medical program and its records. Where, however, these assistance programs are part of the employer's overall medical program and its records, they should be subject to this standard (*See*, Dr. Teitelbaum, Tr. 140–42). Similarly, information on substance abuse and behavioral disorders recorded as part of a medical history or medical examination is covered by this rule.

7. *"Employer."* The word employer is defined by statute (s3(5) of the Act, 29 U.S.C. 652(3)(5)) and that definition will control. In addition to covering current and former employers, the final standard makes clear that successor employers must assume the obligations to retain and make available records of employers that they succeed. The agency chose to mention successor employers explicitly due to the extended periods medical and exposure records must be maintained under this rule.

8. *"Exposure" or "exposed."* The proposed rule was directed toward employees "exposed or potentially exposed to toxic materials or harmful physical agents." This phrase was not explicitly defined, although OSHA intended that it be construed in a traditional industrial hygiene sense (Wrenn, Tr. 102–03). The term "harmful physical agent" was described to include such well recognized exposures as heat, noise, radiation, vibration, and hypo- and hyperbaric pressure (43 FR 31372; Wrenn, Tr. 92–93). The overall phrase, however, due to its generality and breadth, was the subject of some comment and confusion during the rulemaking proceeding (Ball Corp., Ex. 2(122), p. 2; Motorola, Inc., Ex. 2A(26), p. 4; EEI, Ex. 2A(36), p. 24; API, Ex. 158, p. 2n.2). Words like "toxic" and "exposure" are subject to numerous interpretations; thus the final standard clarifies what is intended by the phrase "exposed to toxic substances or harmful physical agents." Subparagraph (c)(8) defines "exposure" or "exposed" while subparagraph (c)(11) defines "toxic substance or harmful physical agent." The goal of this expanded definition is to avoid confusion on the part of employers as to whether their employee medical and exposure records are covered by this standard.

Subparagraph (c)(8) defines "exposure" or "exposed" as meaning "that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations." The final standard thus does not apply to every situation where any chemical or hazard is present in the workplace. While the final rule presumptively applies to all occupational exposures to toxic substances and harmful physical agents, the agency does not intend to cover situations where the employer can demonstrate that an employee is solely exposed to general environmental pollution, or to casual use of consumer products. For example, basic chemical manufacturing processes and abnormal exposures to heat, noise, and vibration are covered by the rule, but typical office working conditions are not. The applicability of the standard does not, however, depend on any showing that the level of actual exposure to a toxic substance or harmful physical agent is particularly excessive, but rather on the unique fact of occupational exposure.

The final rule applies when an employee has "potential (e.g., accidental or possible) exposure" to a toxic substance or harmful physical agent. This phrase was included to indicate that the standard covers situations where exposure could reasonably have occurred and not only situations where exposure has definitely occurred or been measured. An example would be workers handling electrical transformers containing poly-chlorinated biphenyls (PCBs). Exposure is not a certainty since the toxic chemical should be maintained within a closed system. However, seals sometimes leak and accidents occur which disperse the chemical; the final rule is therefore intended to apply to these types of potential exposure situations.

9. *"Record."* The preamble to the proposed rule stated that "the term 'record' as used in this proposed rule, is intended to cover any recorded information regardless of its physical form or character" (43 FR 31372). Questions were raised as to the intended scope of "record" (Wrenn, Tr. 39–37); thus the agency decided to define "record" explicitly in the final standard. The definition provided, "any item, collection or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, or automated data processing)" is meant to be all-encompassing. This is consistent with the flexibility provided to employers by paragraph (d), Preservation of Records, to maintain medical and exposure records in whatever form the employer chooses (with the exception of X-ray films).

10. *Specific written consent."* As discussed in Chapter IV.D, *supra*, the proposed rule was criticized in that employee medical records were to be released upon the mere "written consent" of the employee, but the proposal did not define what was meant by "written consent." There was

widespread agreement that medical records should only be disclosed to non-governmental third parties through a process of carefully designed written consent so as to minimize the possibility of invasion of an employee's legitimate privacy expectations. Invasion of privacy could have significant adverse consequences to the employee (loss of job, friends, insurance, etc.) and impair the physician-patient relationship. OSHA recognizes these potential problems, and thus has incorporated a thorough "specific written consent" definition in the final standard. The components of "specific written consent" are a reflection of the record comments on this issue (*See*, Privacy Commission, Ex. 101, pp. 314–15; AMRA, Ex. 83, p. 12; Dr. Teitelbaum, Tr. 124–26, 157; Dr. Whorton, Ex. 11, pp. 19–20; Dr. Wegman, Tr. 206–07; NIOSH, Ex. 16, pp. 7–8; Dr. Parkinson, Ex. 43 p. 4; Weiner, Ex. 9A, pp. 36–40, Tr. 180–81; Taylor (AFL–CIO), Ex. 39, p. 5; AFL–CIO, Ex. 152, pp. 52–53; USWA, Ex. 160, p. 19; Wodka (OCAW), Tr. 708–09; Health Research Group, Tr. 2045–46).

The essence of "specific written consent" is assuring that the employee knows what is being disclosed, to whom, and for what purpose. Consent which is "blanket" (i.e., a general release of all records to whoever requests them) or "perpetual" (i.e., lacking a time limit or the possibility of revocation) would clearly be unacceptable (AMRA, Ex. 83, p. 7) and arguably legally unenforceable (Annas, Ex. 56B, p. 149). The Privacy Commission recommended an authorization procedure along the lines prescribed in the HEW regulations on the "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR Part 2 (Ex. 129). This working model of consent is contained in Recommendation (13) of the Commission's chapter on medical records:

> That whenever an individual's authorization is required before a medical-care provider may disclose information it collects or maintains about him, the medical-care provider should not accept as valid any authorization which is not:
>
> (a) in writing;
>
> (b) signed by the individual on a date specified or by some one authorized in fact to act in his behalf;
>
> (c) clear as to the fact that the medical-care provider is among those either specifically named or generally designated by the individual as being authorized to disclose information about him;
>
> (d) specific as to the nature of the information the individual is authorizing to be disclosed;
>
> (e) specific as to the institutions or other persons to whom the individual is authorizing information to be disclosed;
>
> (f) specific as to the purpose(s) for which the information may be used by any of the parties named in (e) both at the time of the disclosure and at any time in the future;
>
> (g) specific as to its expiration date, which should be for a reasonable period of time not to exceed one year, except where an authorization is presented in connection with a life or non-cancellable or guaranteed renewable health insurance policy, in which case the expiration date should not exceed two years from the date the authorization was signed. (Ex. 101, p. 315)

The American Medical Records Association recommended a similar model authorization procedure (AMRA, Ex. 83, p. 12).

The final standard's definition of "specific written consent" adopts the substance of these elements. To give consent, an employee will specifically have to indicate in writing who is being authorized to disclose record information, who may have access to it, and the general nature of the information to be disclosed. If the employee wishes, he or she may specify information which is not authorized to be disclosed and may place conditions on its use or redisclosure. In this way, it will be the employee who controls the amount and kinds of information available to the designated representative, and what the representative can do with it.

In addition, the final standard provides for limited prospective authorization by the employee. The AMRA recommendations do not accept prospective authorization for the release of information not yet in existence (AMRA, Ex. 83, pp. 7, 12 (*at* 3.8(h))), while the Privacy Commission's recommendations permit prospective authorizations. The policy argument raised against prospective authorization is that "consent to the release of information prior to treatment" precludes "intelligent decisionmaking on the part of the patient" (AMRA, Ex. 83, p. 7). In general this is a good policy, but there are notable exceptions applicable to the occupational setting. For example, periodic biological monitoring of exposed employees, perhaps on a monthly basis, would generate predictable kinds of medical information outside of a treatment context. If an employee desired for his personal physician, or a union industrial hygienist or physician, to receive biological monitoring results regularly, it is reasonable to permit authorization for the release of future results, as long as the authorization is subject to revocation. Requiring the employee to re-execute a "specific written consent" each month would be burdensome and serve no useful function. Accordingly, the final standard states that "A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, . . ." and for no more than one year even when expressly authorized. The presumption, therefore, is against "prospective consent," but the employee may expressly override this presumption for up to one year. Furthermore, the employee may revoke the consent at any time.

The remaining components of the definition of "specific written consent" are straightforward and need no further elaboration. The definition, however, stops short of some recommendations presented in the rulemaking proceeding. Several employers felt the recommendations of the Privacy Commission were inadequate because an employee may give consent without being fully cognizant of the potential consequences of disclosure, or may be coerced or feel pressured into signing a consent form (Dr. Spraul (Monsanto), Tr. 1915; API, Ex. 158, p. 34). The API proposed these additional safeguards:

> No third party should have an access privilege unless he has a program which provides for (i) a clear and specific statement of an occupational health purpose for access to medical records; (ii) the exclusion of information—particularly personal identifiers—which is unnecessary to the stated purpose; and (iii) security and administrative precautions to prevent access by unauthorized persons. (Ex. 158, p. 35)

OSHA recognizes that it is possible for third parties to abuse specific written consent, but does not believe this merits numerous further provisions in the final standard. The Privacy Commission recognized that its recommendation "provides assurance that an individual will understand what he is allowing to be disclosed, and why, but does not require that the voluntariness of his action be verifiable, nor does it assume that he can recognize every possible consequence of signing it" (Privacy Commission, Ex. 101, p. 315). In the Privacy Commission's view, that is all that one can reasonably expect from a consent requirement, even where an element of coercion is clearly involved in demands for medical records by medical facilities, employers, insurance carriers, or social service organizations (Ex. 101, p. 314). Employers and groups such as the API are apparently concerned about possible coercion by labor unions to gain access, but the record contains no evidence to support this concern or to refute the observation of Peter Weiner that:

> An often silent but present theme is the danger that a labor organization might coerce

its members to give such consent. It is time to recognize that this undercurrent is built on bias without foundation, and that this type of pressure for disclosure is the least of our worries where third parties are concerned. (Ex. 9A, p. 40)

OSHA recognizes, however, that there may be situations where an employee desires to specify additional conditions or restrictions on the use or re-disclosure of medical information released to a designated representative. An opportunity to do this is provided in Appendix A to the standard, which is a model authorization letter meeting the definition of "specific written consent."

11. *Toxic substance or harmful physical agent.* Subparagraph (c)(11) provides that the final rule applies whenever there is exposure to any "chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo- or hyperbaric pressure, etc.)" for which there is evidence of harmful health effects. This definition excludes traumatic safety hazards such as trips, fall, cuts, etc., but includes repetitive motion (ergonomic) stresses due to their subtle and chronic nature (Ex. 187).

Although no comprehensive list of substances or hazards is possible since our knowledge and appreciation of occupational health problems are constantly expanding, OSHA felt it was important to limit the rule to those chemicals, biological agents, and physical stresses for which there is some evidence of toxicity or harmfulness. To do this, the final rule establishes four general criteria for determining when to apply this rule. First, the standard applies to any chemical substance, biological agent, or physical stress which "is regulated by any Federal law or rule due to a hazard to health." The term "chemical substance" is used in the broadest possible sense (e.g., dust, mist, fume, liquid, solid, mineral, etc.). Health regulations of a hazard by any Federal agency, such as OSHA, EPA, FDA, CPSC, NRC, etc., should clearly be sufficient for coverage of exposure and medical records of employees exposed to that hazard. Employers should already be well aware of the hazards associated with these substances and agents.

Second, the standard applies to any chemical, biological agent, or physical stress which "is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS)." NIOSH is mandated under section 20(a)(6) of the Act (29 U.S.C. 669(a)(6)) to publish on at least an annual basis "a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur." Excerpts from the RTECS 1978 edition Foreword and Introduction demonstrate that this document is an appropriate source for defining chemicals covered by this rule:

> The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment. (Ex. 169, p. iii)
>
> This Registry contains 124,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry. (Ex. 169, p. xiii)
>
> The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous. (Ex. 169, p. xiii)
>
> In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters. (Ex. 169, p. xiii)
>
> It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences. (Ex. 169, p. xiv)

In addition to an annual printed edition, the RTECS is continuously updated on a quarterly basis (Ex. 169, p. 1362). The RTECS 1978 printed edition may be purchased for $13.00 (GPO Stock No. 017–033–00346–7) from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202–783–3238). The 1979 printed edition is anticipated to be issued in the summer of 1980. An annual subscription to the quarterly microfiche which revises the RTECS may also be purchased from the GPO for $14.00 (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Appendix B to the standard contains additional information on where RTECS may be examined or purchased.

Third, the standard applies to any chemical, biological agent, or physical stress which "has yielded positive evidence of an acute or chronic health hazard in human, animal or other biological testing conducted by, or known to, the employer." This criterion is intended to cover the situation where the employer is aware that a particular chemical, etc., poses a hazard, even though the chemical may not yet have been identified in RTECS or regulated by any of the health regulatory agencies. OSHA believes that it would be inappropriate to expect that each employer be familiar with the entire body of evolving scientific knowledge concerning the toxicity of chemicals used in its workplaces. Many employers do, however, subscribe to the quarterly microfiche edition of RTECS, review the published literature, receive knowledge of unpublished studies or pre-publication copies of studies, or conduct biological evaluations on their own initiative. Some health hazards, such as extremes of heat and cold, are obvious. Where an employer is aware of evidence suggesting that health risks are posed by the use of a chemical, biological agent, or physical stress, then this rule applies to whatever employee medical and exposure records exist with respect to exposed workers. This provision is crucial as to new chemicals, and will be increasingly important as employers implement the testing requirements of the Toxic Substances Control Act of 1976 (15 U.S.C. 2601 *et seq.*).

Finally, the standard applies to any chemical, biological agent, or physical stress which "has a material safety data sheet indicating that the material may pose a hazard to human health." This document generally accompanies the

purchase of a chemical used in industrial processes, and serves to warn users of toxic properties of the product. Employers of employees exposed to such a chemical are properly covered by this standard, even where the employer may have no knowledge of the precise ingredients, or chemical name, of trade name products.

The foregoing overall definition of "toxic substance or harmful physical agent" is flexible enough to incorporate advances in scientific knowledge, while definite enough to place employers on notice of what their obligations are under this rule. This definition will minimize compliance and enforcement difficulties, and will avoid both unnecessary record retention requirements and the inadvertant destruction of important occupational health information.

D. Paragraph (d)—*Preservation of records*

The proposed regulation provided that:

> Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve and retain them for at least the duration of the affected employee's employment with the employer plus five (5) years, except where a specific occupational safety and health standard provides a different retention period. (43 FR 31374)

This proposal of a "duration of employment plus five years" retention period was explained as follows:

> There may be situations where this retention period may be longer than absolutely necessary, and others where it is too short to ensure the preservation of the record throughout the latency period of an occupational illness arising from an earlier exposure to toxic materials. OSHA believes that the general retention period of this proposed rule strikes a reasonable balance between these two situations.
>
> Nevertheless, because it recognizes that the longer the retention period, the greater the risk of infringement upon employees' privacy interest and the greater the administrative burden on employers, OSHA invites comments on whether a lesser or longer period should be adopted in the final rule for some or all kinds of records covered by the regulation. (43 FR 31373)

Numerous initial comments argued that this retention period was either too long or too short, while others indicated it was just about the correct length of time. On the basis of these comments, OSHA explained at the outset of the public hearings on the proposal that the evidence appeared to dictate a retention period of at least thirty years (Wrenn, Ex. 7, p. 27). Considerable additional testimony and post-hearing comments were submitted on this issue. On the basis of the total record, the agency decided to extend the retention period as to basic exposure and medical information and shorten it as to some background exposure information, while assuring employers maximum flexibility as to the manner in which records are retained.

The final standard provides that employee exposure records and analyses based on exposure or medical records must generally be preserved and maintained for at least thirty years, while employee medical records must be retained for at least the duration of employment plus thirty years. A minimal overall retention period of thirty years was adopted due to the very long latency periods characteristic of chronic occupational diseases. This period is consistent with the recordkeeping requirements of existing OSHA health standards, and with the thirty year retention period for records of significant adverse employee health reactions established by section 8(c) of the Toxic Substances Control Act, 15 U.S.C. 2607(c).

The "duration of employment plus thirty years" retention period for employee medical records takes into account three factors in addition to the long latency periods of occupational disease. First, existing medical record retention practices are such that a running medical record would in any event be maintained for at least the duration of employment. Second, an employee's first exposure to a toxic substance or harmful physical agent could occcur at any point during the course of employment. Third, the entire medical record is of importance even where first exposure to a toxic substance occurs near the end of an employee's employment. This results from the likelihood that important baseline medical information was recorded at the outset of an employee's employment and not recorded thereafter. For ease of administration and certainty the agency chose the duration of employment plus thirty years retention period instead of some more complicated formula. Once an employee becomes exposed to toxic substances or harmful physical agents, his or her entire medical record becomes subject to the standard, including medical information collected prior to initial exposure.

The agency's choice of a minimal retention period of thirty years for exposure and medical records, and analyses thereof, took into consideration the wide variety of suggestions made during the rulemaking proceeding. Recommendations ranged from retention periods of 25 to 40 years: (25 Years.) Dr. Swartz, Tr. 2362; (20–25 yrs.) Dr. Young, Tr. 1099; (30 yrs.) Wodka (OCAW), Tr. 702; (40 yrs.) Dr. Thorpe (API), Tr. 2074; (40 yrs.) AFL–CIO, Ex. 152, p. A2; (40 yrs.) Dr. Wegman, Tr. 208; (up to permanent retention) Dr. Teitelbaum, Tr. 126–27; Dr. Whorton, Ex. 11, p. 21). A variety of intermediate suggestions were made tied to other factors such as the duration of the employee's employment (duration plus 25 yrs.) CACOSH, Tr. 1095; (duration plus 30 yrs.) Laden (USWA), Tr. 668–69; (duration plus 35 yrs.) Dr. Parkinson, Tr. 1142; (duration plus 40 yrs.) HRG, Tr. 2034–36; (duration plus 40 yrs.) ICWU, Tr. 735–36; (30 yrs. or duration plus 10 yrs., whichever is longer) Cement, Lime, and Gypsum Workers, Tr. 1203–04; (40 yrs. or duration plus 20 yrs., whichever is longer) USWA, Ex. 160, p. 22; (40 yrs. from onset of exposure) Dr. Wegman, Ex. 10, pp. 14–15; (30 yrs. from cessation of exposure) NIOSH, Ex. 16, pp. 5–7). More recent OSHA health standards generally provide for retention periods of 40 years or the duration of employment plus 20 years, whichever is longer. This wide variety of possible provisions indicates that no one perfect choice exists. The thirty year retention periods chosen, however, are reasonable in light of the suggestions made and existing evidence concerning the latency period of occupational disease.

There was wide agreement among participants that the long latency periods associated with occupational diseases, especially cancer, dictate the retention of records for decades (Dr. Teitelbaum, Tr. 126–27; Dr. Wegman, Tr. 208; Dr. Swartz, Tr. 2362; HRG, Tr. 2034–36, 2046–49, Ex. 161, pp. 1–3; CACOSH, Tr. 1095; Dr. Parkinson, Tr. 1142; Laden (USWA), Tr. 668–69; ICWU, Tr. 735–36, Ex. 28, p.. 8; USWA, Ex. 160, p. 22; Cement, Lime, Gypsum Workers, Tr. 1203–04; AFL–CIO, Ex. 152, pp. 42–43, Ex. 39, pp. 2–3; Dr. Silverstein (UAW), Ex. 63, pp. 13–14; NIOSH, Ex. 16, pp. 5–7; Dr. Whorton, Ex. 11, p. 21). The following passage and tables from the well-respected text-book, *Chemical Carcinogenesis and Cancers (1964)* by Drs. W. C. Hueper and W. D. Conway of the National Cancer Institute, demonstrate the necessity for long term retention of records:

> The onset of a carcinogenic exposure may antedate by many years or even decades, the appearance of the first symptoms of a cancer causally related to it. The establishment of direct associations between such events is not infrequently obscured by the fact that the critical exposure to a carcinogen may have ceased months-to-decades before the cancer becomes manifest, i.e., an exposure-free and

symptom-free lag period may intervene (Hueper; Williams; Henry; Browning). During this period all traces of the causative carcinogenic agent have often disappeared from the exposed organism. The definite demonstration of causal relations to specific chemical factors encounters for these reasons, considerable difficulties in many cases of environmental carcinogenesis. In assessing the role which chemical carcinogens play in the production of human cancers, due consideration must be given to the fact that, as a rule, some ten years will elapse after the introduction of a new carcinogen into the human environment before its carcinogenic effects upon an exposed and well circumscribed population become epidemiologically demonstrable, that some additional twenty to thirty years may go by before the peak of such a development is reached, and that again a period of similar length will pass before the last carcinogenic manifestations attributable to an environmental carcinogen will disappear after a particular carcinogen has been removed from the human environment. (Ex. 161a)

Table 8.—*Latent Periods of Occupational Cancers*

Organ and agent	Average latent period (years)	Range of latent period (years)
Skin:		
Arsenic:		
Medicinal	18	3-40
Occupational	25	4-46
Tar	20-24	1-50
Creosote oil	25	15-40
Mineral oil	50-54	4-75
Crude paraffin oil	15-18	3-35
Solar radiaton	20-30	15-40
X-radiation	7	1-12
Lung:		
Asbestos	18	15-21
Chromates	15	5-47
Nickel	22	6-30
Tar fumes	16	9-23
Ionizing radiation	25-35	7-50
Bladder:		
Aromatic amines	11-15	2-40

(Source: Ex. 161a)

Table 9.—*Ranges of Latent Periods Following Exposure to Different Aromatic Amines (M. W. Goldblatt)*

Chemical	Maximum period		Minimum period	
	Years	Months	Years	Months
Beta-naphthylamine	16		1	8
Benzidine	33	8	6	10
Toluidine	32		10	
Aniline	36		7	
m-Phenylendiamine				
Dimethylaniline	19-20			

(Source: Ex. 161a)

Very long latency periods are not only associated with occupational cancer, but with occupational disease in general. As Dr. Wegman stated, "we are talking about diseases which are predominantly chronic in nature, * * *" (Tr. 208). Concrete examples include the two non-carcinogens for which OSHA has to date issued comprehensive health standards—cotton dust and inorganic lead. Exposure measurements and medical surveillance records generated under the cotton dust standard must be maintained for at least twenty years (29 CFR 1910.1043(k)(1)(iii) and (k)(2)(iii); 43 FR 27398 (June 23, (1978)). The reason for this period was explained in the preamble to the final rule:

* * * OSHA feels that this retention period is necessary in order to develop sufficient longitudinal dose-response data and to determine the effectiveness of the selected permissible exposure limits in reducing the prevalence of respiratory diseases, particularly irreversible chronic obstructive pulmonary diseases, in each of the covered industries. 43 FR 27393 (June 23, 1978)

Exposure measurements and medical surveillance records generated under the inorganic lead standard must be maintained for at least forty years, or for the duration of employment plus twenty years, whichever is longer (29 CFR 1910.1025 (n)(1)(iii) and (n)(2)(iv), 43 FR 53013 (Nov. 14, 1978)). The preamble to the final standard explained:

Lead is known to have both acute and chronic effects, depending on the level and duration of exposure. The onset of clinical symptoms may occur many years after exposure. OSHA requires these records be maintained to document the medical and exposure history of the worker in order to assist the physician in determining whether lead was an etiologic agent in a disease progression. For example, renal and neurological disease do not necessarily have early warning indicators which physicians might use for evaluation. The records will serve to aid the physician in determining the dose to the worker over his work tenure.

OSHA is also concerned that the physician be able to follow asymptomatic workers who have been exposed to low lead levels over long periods of time, in order to ascertain the long term effects of low level exposure. In this regard, another important function the combined records serve is to provide a data base for much needed scientific and epidemiological research into the effects of chronic low level lead exposure. (43 FR 53006, Nov. 14, 1978)

Dr. Silverstein of the UAW highlighted the need for preservation of records for all potential forms of occupational disease:

Cancer is not our only concern. We have only begun to look at the relationship between workplace exposures and other chronic disease. Medical and exposure records are likely to prove valuable in uncovering the presently hidden links between the workplace and cardiovascular, renal, endocrine, and musculosketetal disease.

There are many current examples of workers who are now exposed to chemicals whose long term effect is unknown but potentially serious. Examples include workers exposed to mixtures of solvent vapors, diesel exhaust, or welding fumes. In other instances workers sustained exposure to substances which are now controlled or removed from the workplace because of suspected but largely unknown long term consequences. Examples include Tris and PCB exposure. Workers in these situations, and unfortunately the National Occupational Hazard Survey would suggest that this applies to an overwhelming number, certainly have the right to expect a diligent effort to determine whether health effects are becoming apparent over the years. Giving sanction to the wholesale destruction of records at five years may prove to be one of the most disastrous public health mistakes we could make. (Ex. 63, pp. 13–14)

The preceding comment by Dr. Silverstein properly emphasizes the limited scope of our knowledge concerning occupational disease in general. Few of the thousands of chemicals in the workplace have been thoroughly tested in animals for chronic toxicity, and systematic human epidemiological investigations of exposed workers have only sporadically been conducted. The history of governmental responses to occupational disease has largely been one of responding to demonstrated disease rather than establishing protective mechanisms before known disease arises. One purpose of this standard is to preserve and make accessible the existing data base of medical and exposure information concerning employee exposure to toxic substances and harmful physical agents so that workers, their representatives and the government can better detect and respond to previously unrecognized associations between exposure and disease. The state of our limited knowledge dictates that records be preserved for long periods of time so these unforeseen associations can be made (Dr. Teitelbaum, Tr. 208). Dr. Young also endorsed this reason for long term retention of records:

We cannot tell now, just as we could not tell 20 years ago, what new dread diseases would become manifest after lengthy latent periods, and I think we would all view with chagrin if not horror a decade or two down the line if important records that would uncover new patterns of risk were not available simply because of an all-too-short five-year retention period. It seems to me the burden on any company is trivial. A few file cases well protected is all we're talking about. (Dr. Young, Tr. 1099)

The preservation requirements of the final standard will enable records to be used in the many fashions envisioned by Section III of the preamble, Purposes and Need for the Standard (*supra*). Both exposure and medical records must be preserved for at least thirty years since they will be critical to understanding and responding to occupational health

problems. For example, prior exposure records can suggest the cause of current disease experience; prior medical records can supply vital baseline health status information to which a patient's current health status can be compared.

The thirty year retention period is reasonable in light of the latency periods associated with occupational diseases, but OSHA recognizes that specific toxic substances may merit longer or shorter retention periods. The final standard explicitly addresses this in two provisions. First, if a specific occupational safety and health standard sets a retention period for exposure and medical records different from that of this rule, the specific standard's provision controls. This is appropriate since the provisions of specific health standards are based on rulemaking evidence of the consequences of employee exposure to the toxic substances being controlled. Second, the standard envisions situations where records may have occupational health value beyond the retention periods of this rule. To deal with this, the stardard provides that whenever an employer intends to dispose of records required to be kept at least thirty years, the employer shall notify the Director of NIOSH of this intention. The required three months advance notice will enable NIOSH to assess the value of the records and take steps, if appropriate, to prevent destruction of the records. NIOSH and OSHA will communicate with each other so that notice to NIOSH will also notify OSHA of the impending destruction of covered records.

The final standard has been structured so that only certain records subject to the rule must be retained for the thirty year period. Analyses using exposure and medical records must be maintained for at least thirty years since these records will likely be most useful in analyzing patterns of disease. Similarly, employee medical records must be preserved for at least the duration of employment plus thirty years since there is no rational way to determine in advance which portions of a medical record may or may not become important in the future. Health insurance claims records which are maintained separately from the employer's medical program and its records, however, need not be retained for any period of time.

In addition, not all employee exposure records must be maintained for at least thirty years. Exposure records describe the identity of, and possibly the level of exposure to, a toxic substance or harmful physical agent. These two elements—identity and level of exposure—are the critical data which must be preserved for at least thirty years.

The definitions paragraph of the rule defines "employee exposure record" as encompassing four kinds of records. The first kind, environmental (workplace) monitoring or measuring, can contain a wide variety of information which is critical to the evaluation of occupational exposures. Industrial hygiene surveys will often involve detailed laboratory reports, worksheets containing mathematical calculations and other background information, documentation of collection (sampling) methodology (where, when, how, and under what working conditions samples were collected), and other assorted documents. Not all of this information is of lasting importance, and several participants offered varied opinions as to how long the background data should be retained (USWA, Ex. 160, pp. 22; AFL–CIO, Ex. 152, p. 45). The final rule provides that "the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained" must be retained for at least thirty years. Permitting analytical and mathematical methods to be described, and other relevant background data to be summarized, will enable bulky records such as laboratory reports and worksheets to be discarded. This background information, however, must be maintained for at least one year to allow workers, their representatives, and OSHA a reasonable opportunity to evaluate the exposure calculations and thoroughly examine the employer's methodologies.

The second type of "employee exposure record," certain biological monitoring results, must under the final standard be maintained for at least thirty years (and employment plus thirty years if made part of an employee's medical record) for the same reasons applicable to environmental monitoring.

However, the third and fourth types of employee exposure records, material safety data sheets and other records which reveal the identity of a toxic substance or harmful physical agent, need not be retained for any specific period of time. The final rule provides that these records "need not be retained for any specified period so long as some record is retained of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used." This provision will assure retention of the basic exposure information for at least thirty years while enabling employers to avoid burdensome record retention obligations.

The agency believes that the retention requirements of the final standard are necessary and appropriate, and sufficiently flexible to avoid burdening employers with unjustified obligations. We recognize that several employers urged that shorter retention periods be established than the one proposed (North Car. Nat. Gas Corp., Ex. 2(134); Wash. Legal Foundation, Ex. 2(96); Magma Copper, Tr. 1451; Fertilizer Inst., Tr. 2160; Steel Plate Fabricators, Tr. 2520), but the long latency periods associated with occupational disease and the limited extent of our knowledge dictate the periods chosen.

The agency recognizes the possibility that in specific narrow factual settings requirements other than those established by this standard may provide equivalent protection. Employers or their trade associations are free to file applications for variances under section 6(d) of the Act (29 U.S.C. 665(d); *See*, 29 CFR Part 1905) in situations where equally effective or better means exist to achieve the goals of this rule. As with other standards, variance proceedings will enable case-by-case consideration of specialized factual circumstances, and will add flexibility to the application of the standard. In addition, this standard itself may, of course, be subject to modification in the future, either in response to a petition to modify or to other developments.

Although the final standard establishes long retention requirements for some records, the agency is confident that the burdens imposed will not prove to be significant. First, the final rule states that "Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record, as long as the information contained in the record is preserved and retrievable, except that x-ray films shall be preserved in their original state." As a result, with the exception of x-rays, employers are provided maximum flexibility to microfiche, microfilm, computerize, or otherwise retain records in whatever fashion is most desirable to the employer (*See*, Truckline Gas Co., Ex. 2(153), p. 2; Beckman Instruments, Inc., Ex. 2A(6), p. 1; Motorola, Inc., Ex. 2A(26), p. 10). The agency has previously studied the issue of microfilming x-ray films and has reached the conclusion that in view of currently available technology, this practice should not be permitted (Ex. 188). The analysis of x-ray films is highly dependent upon the

quality of the film, and appreciable detail is clearly lost when an original film is microfilmed or otherwise copied. As a result, the final rule provides that "x-ray films shall be preserved in their original state."

Second, the record suggest that many employers and medical establishments already maintain medical and exposure records for lengthy periods of time.

We, Illinois Bell Telephone Company now-have now adopted a policy of microfilming [medical records] and keeping them for an indeterminate period of time. (Dr. Hilker, Illinois and Chicago Medical Societies, Tr. 2532)

* * * * *

Most hospitals retain the medical record or the most pertinent parts of that record in some reproducible form such as microfilm or microfiche for literally ever, indefinitely. (ARMA, Tr. 2466)

* * * * *

NIOSH believes the employer burden for keeping records of terminated employees is probably not that great since it just involves space and minimal maintenance and logistics. In fact, through the use of techniques such as microfilming, space is no longer a problem.

It is NIOSH's opinion that by far the largest burden upon the employer is creating the records initially rather than maintaining them after they are created. Also, it should be noted that NIOSH experiences during the conduct of field studies is that industry is recognizing the importance of maintaining records for longer periods of time (i.e., 30–40 years) and a retention requirement in the OSHA regulation will not be as if industry is starting from point zero. (Bierbaum (NIOSH), Ex. 16, p. 7)

* * * * *

If exposure and medical records are to be useful in advancing our knowledge of [occupational] diseases (an avowed purpose of the proposed rule), records must be kept for longer than five years, and perhaps for fifty years or more. It is common practice in the medical world to retain medical records almost permanently or at least for some years after the death of the individual concerned. (Dr. Goldwater, Chief of Occ. Med., Duke U. Med. Center, Ex. 2(87))

* * * * *

Mr. Spiller: Okay, would you say that medical training generally encourages doctors to keep their medical records almost indefinitely or at least for the lifetime of the patient or certainly for very long periods of time?

Dr. Thorpe: Yes, I believe so. I have always had the feeling—I know that there are statutes of limitations, but most physicians and I think most hospitals don't abide by that. They may reduce or prune or convert medical records into manageable storage space, but most physicians have a horror of destroying medical records. (Dr. Thorpe, [Exxon Corp.], Tr. 2122)

(See also, Deere & Co., Ex. 2(84), p. 2 (at least the lifetime of the employee); Eller (ICWU), Tr. 735–36 (employment plus 10 yrs. in Dow Chemical Co.); RCA, Ex. 2(75) (employment plus 10 yrs.); DuPont, Ex. 114A, p. 1 (employment plus 40 yrs.); Dr. Thorpe (Exxon Corp.), Tr. 2121–22 (at least 40 yrs.)). Also, the importance of medical and exposure records to potential legal proceedings such as workers' compensation and medical malpractice suits is a strong inducement for long term retention of records. As noted by Dr. Hanks, Medical Director of the Personnel Department of the City of Los Angeles:

With respect to retention of records, at least some States have laws extending statute-of-limitations for filing of workers' compensation claims to within a year following the employee's awareness of an occupational illness. This makes for indefinite retention of records on large classes of employees, since decades may pass between alleged exposures and illnesses related or alleged to be related to such exposure. In other words, employer self-interest and potential liability call for indefinite retention, even to the post-mortem period in which claims are apt to be filed by survivors. Thus a federal regulation would be superfluous in such States and possibly superfluous in any case, since self-interest would indicate retention well-beyond a five-year post-termination date in view of evolving laws in employees' favor. (Ex. 2A(35))

This is further supported by a recent article in *Malpractice Digest,* a bi-monthly newsletter to medical malpractice insurance policyholders, which is published by the St. Paul Fire & Marine Insurance Co., the leading carrier of medical malpractice insurance:

The need for accurate medical records goes beyond the efficient day-to-day practice of medicine. Medical records have become legal documents which play a major role in many matters, including medical malpractice. The responsibility of the physician to properly document the care provided to patients also turns up in personal injury suits, workers compensation disputes, pension eligibility investigations and contests of wills.

The best defense in any action involving the practice of medicine is accurate, legible and complete records. (Ex. 189 p. 1).

As a result of the foregoing, it is clear that the preservation requirements of the final standard are promulgated against a backdrop of existing widespread long term retention of records, and thus pose little additional burden.

E. Paragraph (e)—*Access to records*

Paragraph (e) of the final standard significantly refines the language previously contained in the proposal's paragraph (d), Availability of records. Subparagraph (e)(1), *General,* specifies the mechanics of access to avoid possible confusion and abuse of the rule's access rights. Subparagraph (e)(2), *Employee and designated representative access,* is little different from the proposal as to exposure records and analyses using exposure or medical records. As to medical records, however, subparagraph (e)(2) is changed from the proposal in two respects. Designated representatives obtain access only through a process of specific written consent, and physicians are provided limited discretion to release certain medical information to designated representatives rather than to the employee directly. Subparagraph (e)(3), *OSHA access,* varies from the proposal in that administrative regulations established at section 1913.10 of 29 CFR are incorporated by reference as to employee medical records, and NIOSH access is no longer directly addressed by this rule.

Subparagraph (e)(1) of the final standard addresses the mechanics of access to records. First, the rule in (e)(1), as well as elsewhere in paragraph (e), provides that "the employer shall assure that" various obligations are met. The use of "assure" was chosen instead of providing that the employer directly perform various obligations since the mechanics of access often will be performed by medical personnel not directly supervised by the employer. Several participants urged that the final rule not be worded in a manner which implicitly expands employer access to confidential employee medical records (AFL–CIO, Ex. 152, p. 54; USWA, Ex. 160, p. 16; Dr. Parkinson, Tr. 1138–39). The use of "assure" avoids this result.

Subparagraph (e)(1) next states that employee and designated representative access must "be provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made." This language permits employers to establish orderly procedures for providing access so that work schedules are not unduly disrupted and workers not unduly inconvenienced (NAM, Tr. 2180–81, 2197; Ohio Bldg. Chpt., Ex. 2(29); Bofors Lakeway, Inc., Ex. 2(156), p. 3; Motorola, Inc., Ex. 2A(26), p. 10). An employer, for example, need not pay an employee during the time a requested record is being reviewed, if the record is made available before or after the worker's normal working hours. It also recognizes that records may be stored in several locations or in centralized storage, and thus not immediately accessible at the place of employment (Southern Cal. Edison, Tr. 1515, 1518). The use of "reasonable time" and "in no event later than fifteen days after the request for access is made" also

responds to recommendations that definite time limits be established to preclude inordinate delay by employers (OCAW, Ex. 2(124), p. 3; ACTWU, Ex. 2(201), p. 5; AFL–CIO, Ex. 152, p. 56; USWA, Ex. 160, p. 23, Tr. 669; ICWU, Ex. 28, p. 9; NIOSH, Ex. 16, p. 8; Right to Know Coalition, Ex. 2(103), p. 1). What is a "reasonable" time will vary from situation to situation.

Immediate access will be required where records are readily available, whereas the maximum fifteen calendar days provided may be necessary where records must be photocopied and mailed across the country. The use of the phrase "reasonable time, place, and manner" is also intended to preclude unjustified barriers to access, such as limiting access to clearly inconvenient times or places (e.g., requiring workers to sacrifice worktime in order to exercise access rights).

Subparagraph (e)(1) also contains language specifying what happens when an employee or designated representative desires an exact copy of a requested record. The proposed rule was unclear on this issue (*See*, Wrenn, Tr. 37) although it was intended that employers, as with other compliance obligations, would have to bear the costs of making requested records available. Several participants urged that employers explicitly be required to bear the expense of providing copies of requested records (Right to Know Coalition, Ex. 2(103), p. 1; USWA, Ex. 160, p. 23, Tr. 669; ICWU, Ex. 28, p. 9). Other participants complained that the proposal was open-ended and provided no disincentive for employees and designated representatives who might abuse access rights through the submission of large numbers of superfluous requests, the costs of which would presumably be borne by employers (Shell Oil Co., Ex. 2(105), p. 8; Xerox Corp., Ex. 2(136), pp. 1–2; Am. Trucking Assn., Ex. 2A(1), pp. 6–7; NAM, Tr. 2180–83; API, Ex. 158, pp. 46–47). The language adopted in the final standard is responsive to all of these concerns.

It is OSHA's intention that should an employee or designated representative simply desire to examine and possibly hand copy a record, then the employer must bear all administrative costs associated with this opportunity. Abuse of this opportunity is unlikely since access will normally be on an employee's own time. Should the employee or representative desire an exact copy of a record, the standard enables the copying to occur at minimal cost to the employee, while also providing the employer the flexibility to minimize costs and prevent abuse. On the first occasion that an employee or designated representative requests a copy of the record, the employer has three choices. The employer can assure that (1) a copy is provided without cost, (2) the necessary mechanical copying facilities (e.g., photocopying) are made available without cost so that the employee or representative can make an exact copy at the employer's site, or (3) the record is loaned for a reasonable time to enable an exact copy to be made. An employer can avoid abuse through use of the latter two alternatives, and minimize costs by copying records once and loaning out the copy when requested. The most an employee or representative would ever have to pay would be what it costs to have records copied at one's own initiative.

In addition, the standard provides that "Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record." "Administrative" costs are not meant to encompass overhead or capital costs. Two other limiting phrases are added. First, "An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided." Second, "An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records." Collective bargaining agents are given special status as designated representatives under this rule, and their ability to obtain a copy of records to use on behalf of all employees should not be encumbered by the fact that a copy of a record was previously provided to a specific employee. However, once a copy of a record has been provided to a collective bargaining agent, the employer may charge for subsequent requests by an employee, by the union, or by another designated representative. As a result, once a copy of an exposure record or an analysis of records has been provided to the union, the opportunity of the employer to charge for subsequent requests will prevent any possibility of abuse of the rule's access rights.

Subparagraph (e)(1) contains one more provision which was suggested during the rulemaking (USWA, Ex. 160, p. 21). The standard provides that "Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section." This language makes it clear that the final rule establishes only minimal obligations under the Act, and that collective bargaining agents may have or may bargain for additional access rights. Unions may, for example, desire to bargain for automatic provision of records to employees, for summaries and analyses of records to be prepared and made available to workers and the union, or for major epidemiological studies to be conducted using employee records. The agency's approach is in no way intended to impede innovative programs by employers, employees, and their unions.

Subparagraph (e)(2) of the final standard governs employee and designated representative access to records. Subparagraph (e)(2)(i) concerns employee exposure records. Employees are provided access to "relevant" employee exposure records, which consist of four kinds of employee exposure records. An employee first is assured access to "records of the employee's past or present exposure to toxic substances or harmful physical agents." The relevance of these records is obvious.

Second, an employee is assured access to "exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee." Access to records of other employees is provided in recognition of the fact that most environmental monitoring using personal samples is conducted on a representative sample basis. Therefore, to discover his or her own exposure, an employee may have to rely on measurements taken concerning other employees. Also, access to exposure records of other employees will enable analysis of the role of work practices and personal hygiene in minimizing exposure (Dr. Wegman, Ex. 10, p. 8). The Health Research Group was concerned over the privacy implications of an employee's knowing another employee's exact exposure and expressed the fear that disclosure of this information could lead to an employee's being discriminated against when seeking future employment or other benefits (HRG, Tr. 2043–45). The agency, however, agrees with other participants that the privacy interests involved in exposure records are minimal, and any risk of harm is clearly outweighed by the need for access (Weiner, Tr. 195;

AFL–CIO, Ex. 152, pp. 55–56; Samuels (AFL–CIO IUD), Ex. 36, pp. 3–4). It is OSHA's judgment that a potential employer, insurance company, or other person inclined to discriminate against an employee on the basis of prior exposure to toxic substances or harmful physical agents could easily discriminate simply by knowing what job an employee did and where; the employee's exact extent of exposure would not be needed.

The third kind of "relevant" employee exposure records covered by the final standard are "records containing exposure information concerning the employee's workplace or working conditions." These records would include area, grab, or wipe samples which would not specifically characterize the exact exposure of any one employee. Also included would be material safety data sheets and other records which simply reveal the identity of a toxic substance or harmful physical agent.

The fourth kind of "relevant" records are "exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred." This substitutes for the phrase "potential exposure" in paragraph (d)(2) of the proposed rule (43 FR 31374), and will permit workers "to better understand the risks they might assume by bidding on a job, the specifics of which they are not well-acquainted with until they actually enter the job category" (Dr. Wegman, Ex. 10, p. 8). The use of "pertaining to" is meant to cover those exposure records the employee would have access to if actually working in the new job.

Subparagraph (e)(2)(i) provides designated representatives of an employee with access to employee exposure records equal to that of the employee. Given the definition of "designated representative," this will normally require some written authorization from the employee. The final standard contains no rigid criteria as to what this written authorization must say. Any written statement which is signed and indicates that the designated representative is authorized to exercise the employee's right of access will suffice. "Designated representative," however, is defined to automatically include recognized or certified collective bargaining agents for the purpose of exposure records and analyses of exposure or medical records. Collective bargaining agents thus do not have to obtain a written authorization to gain access to these records. Occupational safety and health matters are a well established subject for collective bargaining and union officials will undoubtedly frequently act on behalf of bargaining unit employees in exercising rights of access under this standard. Collective bargaining agents also have rights under several provisions of the Act to act on behalf of their members (*See, e.g.*, §§ 8(e), 8(f)(1), 8(f)(2), 10(c), 13(d) 20(a)(6) of the Act, 29 U.S.C. 657(e), 657(f)(1), 657(f)(2), 659(c), 662(d), 669(a)(6)). Requiring separate written authorization from each employee in the bargaining unit before a union could seek access to all relevant exposure records concerning the bargaining unit would pose unreasonable burdens and would be contrary to the status that is afforded to the union by law.

Subparagraph (e)(2)(ii) governs employee and designated representative access to employee medical records. The contents of this subparagraph have largely been discussed previously in Section IV of the preamble, Central Factual and Policy Issues Concerning Access to Records. First, employees are afforded direct access to their own medical records, subject to one limited exception applicable to potentially harmful information involving terminal illness, or psychiatric conditions. Access of an employee is provided only to medical records of which the employee is the subject; in all other cases specific written consent must be obtained. Second, a designated representative of an employee may gain access to an employee's medical records only through the specific written consent of the employee. This restriction applies to all designated representatives, including collective bargaining agents. Paragraph (c) defines "specific written consent" in detail, and Appendix A has been added as a sample form reflecting this definition. Appendix A satisfies the requirements of the standard but is offered as a sample form, not as a mandatory requirement.

Third, the final rule explicitly authorizes physicians on behalf of employers to make recommendations to employees and designated representatives in connection with the exercise of access rights under this section. The physician may recommend a consultation for the purposes of reviewing and discussing requested records, or may urge that a summary of material facts and opinions be accepted in lieu of the records requested. Other possible recommendations would include the physician urging that requested records be provided only to a physician or other designated representative. These provisions were added to the final standard to make it clear that physicians (not non-medical management personnel) could in their professional judgment recommend alternative or additional means of informing workers of the contents of their medical records other than by direct access to the records. The physician, however, may only make recommendations to the employee or designated representative; full access under the standard must be provided where the employee or designated representative chooses not to follow the recommendations, with the one exception noted below.

Fourth, the final standard does give physicians limited discretion to deny direct employee access to portions of medical records in certain circumstances. In the narrow situation where a specific diagnosis of a terminal illness or psychiatric condition is involved, there may be some cases where direct employee/patient access to this information could possibly prove harmful to the employee's health. In recognition of this possibility, the final rule adopts the recommendation made by the Privacy Commission. If a physician representing the employer believes that direct access to this information could be detrimental to the employee's health, the employer may deny the employee's request for direct access to this information. The employer must, however, inform the employee that access will be provided to a designated representative having specific written consent. Where the employee designates a representative to receive the medical information, the employer must assure that access is provided to the designated representative, even where it is known in advance that the designated representative will give the employee full access to the requested information. The designated representative will then be the ultimate judge of whether and in what manner the employee/patient should have full acess to the information.

Lastly, the final standard authorizes the deletion from requested medical records of the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status. As noted in Chapter IV, Central Factual and Policy Issues Concerning Access to Records, several participants argued that information contained in medical records provided by confidential informants should not be disclosed to an employee due to confidentiality expectations and the possibility even of violence. Confidential informants could include

family members, personal friends, and fellow workers. Dr. Young expressed strong doubts that company physicians often receive confidential information from a worker's family (Tr. 1109), and it is probably also rare that friends of an employee engage in these communications. Where such communications do occur, Dr. Teitelbaum described in some detail how he as a physician would disclose to the patient the identity of the informant and the content of his or her communication (Tr. 137–140). This is a very sensitive area, however, and in this narrow situation, OSHA decided that the identities of personal friends, fellow employees, and family members who may have provided confidential information may be deleted prior to disclosure of the medical record. This is the one area where OSHA believes that legitimate expectations of confidentiality have been created which override whatever marginal occupational safety and health purpose would be served if disclosure of the informant's identity was provided. This provision, however, is limited to the identities of fellow employees, personal friends, and family members, on the basis that those who stand outside this personal relationship, such as the employer (i. e., supervisory and managerial employees) or another physician or medical person, are not justified in any expectation of confidentiality and should not be so insulated from disclosure. Moreover, the substance of the information provided by the family member, friend, or fellow employee must be disclosed to the extent that this would not clearly identify the informant. Observations of a worker's strange behavior or apparent poor health status could be highly relevant to occupational disease; for example, where unusual behavior is the consequence of an unrecognized central nervous system disorder.

Subparagraph (e)(2)(iii) governs employee and designated representative access to analyses using exposure of medical records. Access to these records was provided in the proposed rule (43 FR 31374), and several participants endorsed worker and designated representative access to these records (AFL–CIO, Ex. 152, pp. 54–55, Ex. 39, p. 5; USWA, Ex. 160, p.15; United Technologies Corp., Ex. 2(6), p. 1; Deere and Co. Ex. 2(84), p. 2; Union Carbide, Ex. 2(104), p. 4). These records will often be most valuable for efforts to detect, treat, and control occupational health problems. As a result, an employee or designated representative is assured direct access to analyses concerning the employee's working conditions or workplace. As to analyses using employee medical records, however, access without specific written consent is provided only where the analysis does not report the contents of employee medical records in a personally identifiable form. OSHA anticipates that in practice most analyses would not identify specific employees, but this will not necessarily always be the case. A listing of lung function results, for example, may list the employee names with the laboratory results. The final standard provides that the employer shall assure that personal identifiers are removed before access is provided. Personal identifiers are defined as either a "direct identifier (name, address, social security number, payroll number, etc.)" or "information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.)." A reasonableness qualification was added since the number of employees involved and the manner in which the data is presented will affect whether or not factors such as age or job title can be used to identify specific employees. The final rule also provides that "If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided."

Once aggregate medical information is reported in a non-identifiable form such as in most research studies, there are no substantial privacy interests to be served by preventing direct access by those most interested in the analysis. Accordingly, the final rule provides for access to analyses without any prior showing of written consent by each employee whose records are part of the analyses.

Subparagraph (e)(3) of the final standard governs OSHA access to records. As was the case with the proposed rule, the final standard requires that employers assure OSHA access to all records subject to this section. This access is to be "immediate." As explained earlier in the preamble, this access is also not conditioned on employee consent. Due to the strong personal privacy interests associated with employee medical records, however, the agency is simultaneously promulgating strict rules of practice and procedure governing OSHA access to employee medical records (and any analyses using employee medical records which report the contents of employee medical records in personally identifiable form). These administrative regulations specify the mechanism by which the agency will seek access to medical records, and how the records will be handled once in the agency's possession.

One route by which the agency will seek access to personally identifiable employee medical information is by presenting to the employer a written access order approved by the Assistant Secretary. In order to inform employees of the contents of this order, the final standard provides that "the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days."

Finally, subparagraph (e)(3) unlike the proposal does not address NIOSH access to records. Due to the differences between NIOSH and OSHA's functions, responsibilities, and personnel, it was felt that no one set of administrative or substantive regulations was fully adequate for both agencies. NIOSH has independent legal authority to seek access to employee exposure and medical records; thus their exclusion from this rule will not affect NIOSH's operations.

F. Paragraph (f)—*Trade secrets*

Section IV.F of the preamble, *supra*, explains in detail the agency's decisionmaking as to trade secret issues. Section V.B, *supra*, explains the legal analysis which underlies and supports OSHA's policy determinations. The final standard accommodates trade secret concerns so far as possible, but where irreconcilable conflicts arise, the public health interest in access prevails. For example, employers may not delete from requested records "chemical or physical agent identities including chemical names, levels of exposure, or employee health status data." The use of "identities" is meant to preclude the withholding of chemical names as well as trade names. The use of "health status data" is meant to encompass any kind of medical information concerning an employee.

Although identities, levels of exposure, and health status data may not be withheld, the employer may delete "any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted." In addition, the final rule provides that an employer may require as a condition of access to trade secrets "that the employee or designated representative agree in writing not to use the trade secret information for the

purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer." This provision will assure that an employer's statutory or common law remedies are effectively brought to the recipient's attention. This will preserve an employer's rights even in the event that an employee or designated representative attempts to misuse protected trade secret information. This provision is intended to enable employers to establish a basic contractual obligation not to misuse trade secret information, but may not be used as a pretext for more onerous requirements such as the posting of penalty bonds, liquidated or punitive damages clauses, or other preconditions. The employer may, however, prominently label released documents as containing trade secret information so that anyone who misuses the documents does so with actual notice of its protected status.

The final standard contains one other provision addressed to situations where an employer may properly delete information from a record. OSHA can envision situations, for example, where exposure records contain specifications of where and when samples were collected such that the "where and when" possibly constitute or reveal trade secrets. The "where" might be five feet above a piece of confidential process equipment described by its technical name; the "when" might be ten minutes after a secret chemical reaction becomes evident by a specified temperature change. These kinds of trade secret information may be withheld, but doing so might eliminate any possibility of adequately interpreting the results obtained. Accordingly, the rule provides that "whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred." The alternative information must be in a form employees will understand, such as "five feet above pump No. 7" or "the pump closest to the office." Employees already know the way that their workplaces are set up or designed and the steps followed in manufacturing processes. In some cases alternative information could itself be a trade secret, but it must nonetheless be provided since it is needed and employees already know it. This information, as with all other trade secret information provided, can be made the subject of a written agreement not to misuse the information.

G. Paragraph (g)—*Employee information*

Paragraph (g) of the final standard contains basic employee information requirements similar to those of the proposed rule (43 FR 31374). The final standard provides that employers must inform employees of "(i) the existence, location, and availability of any records covered by this section, (ii) the person responsible for maintaining and providing access to records, and (iii) each employee's rights of access to these records." Employers must complete this instruction within sixty (60) days of the standard's effective date for current employees, and annually thereafter. As recommended by Dr. Teitelbaum (Tr. 126), equivalent information must also be provided to new employees upon their first entering employment. These information requirements are intended to maximize employee awareness of their rights under this standard so that access will be utilized to help detect, treat, and prevent occupational disease. Several participants endorsed the importance of these basic requirements (Dr. Parkinson, Ex. 43, pp. 5–6; Dr. Wegman, Tr. 209; Spatz (Cement, Lime and Gypsum Workers), Tr. 1204).

Several industry participants argued that the employee instruction provisions of the proposal were too burdensome (Skiba (Magma Copper), Tr. 1455; Xerox Corp., Ex. 2(136), p. 1). Specifically, the obligation to inform "each" employee was challenged since it was thought to connote a duty to advise employees individually. It was suggested that alternative means exist to inform employees (bulletin board notice, etc.) which would both satisfy the intent of the provision to apprise employees of this regulation and place a minimal burden on the employer. The Xerox Corp. further suggested that the employee rights of access could be expressed on the annual Summary of Occupational Injuries and Illnesses which employers are currently required to post (Ex. 2(136), p. 1). Counter to these arguments were the comments of the Right to Know Coalition (Ex. 2(103), p. 2). The Coalition argued that to apprise employees adequately of their rights under this rule, the employer should provide written notice to each employee individually and assure that the records are legible and in a language understood by the employees.

The agency believes that employee information is crucial, but the final standard, in order to minimize unnecessary burdens on employers, is deliberately flexible. Employers may use any method which will effectively apprise employees of their rights, including posting, group discussions, or individual notification. The agency believes that a requirement of written notification to each employee is unnecessary in this case. Several other minor provisions have been added, however, to improve the ability of workers to exercise rights under this rule.

The final standard, as is the case with other OSHA health standards, provides that employers "shall make readily available to employees a copy of this standard and its appendices." Ready access to the standard itself will better enable employees to exercise their rights. In addition, the final rule provides that the employer "shall distribute to employees any informational materials concerning this standard which are made available to the employer" by OSHA. OSHA intends to develop specific training and educational materials concerning this standard for distribution and presentation to employees. The standard's provision will assure effective distribution of these materials when they are completed.

H. Paragraph (h)—*Transfer of records*

A remaining issue concerns the possible transfer of records when an employer goes out of business, or when the preservation periods of the standard expire. The preamble to the proposed rule invited comments on this issue (42 FR 31373). Several participants urged that successor employers assume the obligations of prior employers (HRG, Tr. 2035–36; AFL–CIO, Ex. 152; p. 47; ICWU, Ex. 28, p. 12), and the final rule so provides. The final standard also requires an employer who is going out of business in situations where there will be no successor employer to notify his employees of their access rights at least three months in advance of ceasing to do business. This notification requirement is considered appropriate to assure that employees in this situation are given the opportunity to exercise their rights before, as a practical matter, they may be lost to them forever.

Several other suggestions were made as to what to do when there is no successor employer. Direct transfer to NIOSH was recommended (AFL–CIO, Ex. 152, p. 47; ICWU, Ex. 28, p. 12) as was direct transfer to employees (Cement, Lime and Gypsum Workers, Tr. 1203). Recent OSHA health standards specify direct transfer to NIOSH ((inorganic lead) 29 CFR 1910.1025(n)(5)(ii), 43 FR 53014 (Nov. 14,

1978); (cotton dust) 29 CFR 1910.1043(k)(4)(ii), 43 FR 27398 (June 23, 1978)), as does the model standard contained in OSHA's recent cancer policy standard (29 CFR 1990.151(q)(4), 45 FR 5292 (Jan. 22, 1980). The final standard provides that, if a specific standard requires the transfer of records to NIOSH, its transfer requirement must be followed. NIOSH endorsed this mandatory transfer approach (NIOSH, Ex. 16, p. 11). Mandatory transfer will enable NIOSH to eventually assess the adequacy of the specific standard's protective provisions.

Where no specific health and safety standard applies to the records being disposed of, OSHA does not believe it is appropriate to mandate automatic transfer of the records to either NIOSH or OSHA. The records may or may not be valuable for future epidemiological investigations. Rather than mandate automatic transfer, the final rule provides a three months notification to NIOSH requirement. This notification will given NIOSH and OSHA an opportunity to initiate appropriate action based on the circumstances of each situation.

The final standard also recognizes that the thirty (30) year preservation requirements may continuously be expiring as to various records, such that records are disposed of quite frequently. Rather than require notice to NIOSH each time a record is discarded, the rule provides:

> Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least three (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

I. Paragraph (i)—*Appendices*

The appendices included with the standard are intended to provide information and are not intended to create any additional obligations not otherwise imposed. This applies both to Appendix A and B and any other appendix that may subsequently be issued.

J. Paragraph (j)—*Effective date*

The effective date of this standard is ninety (90) days after the rule is published in the **Federal Register**. This three month period is intended to provide sufficient time for employers and employees to become informed of the existence of the standard and its requirements. With the exception of initial employee information requirements, all obligations of the rule commence on its effective date. An extra sixty (60) days are given for employers to provide the information required in subparagraph (g)(1) to employees employed on the effective date.

Any petitions for administrative relief from this final standard, including an administrative stay pending judicial review, must be filed with the Assistant Secretary of Labor for Occupational Safety and Health within 45 days of the publication of this standard in the **Federal Register**. Any petitions filed after this date will be considered untimely. This requirement is considered essential to permit the agency to give full consideration to each petition and respond in advance of the effective date of the standard.

K. Conforming amendments

The access proposal indicated OSHA's intention to make necessary conforming amendments to current OSHA standards such as those in subparts T and Z of Part 1910 so that their access provisions would be consistent with the final access standard (43 FR 31372). The terms of current OSHA records access requirements, such as those in the vinyl chloride standard (29 CFR 1910.1017(m)(4)—(m)(6)) and the cotton dust standard (29 CFR 1910.1043(k)(3)(ii)—(k)(3)(iv)), are less detailed than and in some respects inconsistent with the provisions of the new access standard. Also, existing provisions are in some cases not as effective as the provisions of the new rule in providing for employee and designated representative access to personal monitoring and medical data.

Furthermore, while specific standards all provide for OSHA access to mandated records, 29 CFR 1910.20, as set forth below, also affects OSHA's access to these records. As a companion document to 29 CFR 1910.20, OSHA has promulgated administrative regulations at 29 CFR 1913.10 entitled "Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records". By its terms, 29 CFR 1913.10 applies to OSHA access to personally identifiable employee medical information which is required to be kept by specific OSHA standards. Since 29 CFR 1910.20(e)(3) references 29 CFR 1913.10 as governing OSHA access to employee medical records, the conforming amendments serve to make section 1913.10 applicable to the many standards in Part 1910 which currently contain specific provisions for OSHA access to mandated medical records. On the other hand, since some specific standards provide for certain records such as equipment inspection records (commercial diving) and authorized personnel rosters (vinyl chloride) which are not covered by section 1910.20, general provisions which provide for OSHA and NIOSH access to all records under particular standards have been left unchanged by the conforming amendments.

The necessary conforming amendments which are being made to existing records access provisions of Part 1910 clarify that 29 CFR 1910.20 governs employee, designated representative, and OSHA access to exposure and medical records created pursuant to specific occupational safety and health standards. To avoid confusion, the definitions contained in paragraph (c) of section 1910.20 shall control in the amended provisions. For instance, the term "employee" in the amended provisions includes current employees, former employees, and employees being assigned or transferred to work where there will be exposure to a toxic substance or harmful physical agent (*See*, 29 CFR 1910.20(c)(4)). The term "designated representative" as defined in 29 CFR 1910.20(c)(3) includes individuals or organizations to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent is treated automatically as a designated representative without regard to written employee authorization.

Paragraph (f) of 29 CFR 1910.20 concerning trade secrets is not applied by the conforming amendments to these existing standards since records mandated by specific standards have not contained trade secrets and there has been no need to structure special protections for trade secrets in the context of these specific standards. The current provisions for NIOSH access to records also remain unchanged by these conforming amendments. Furthermore, the records preservation requirements of the specific standards are not affected by these conforming amendments. For example, medical records required by the vinyl chloride standard must still be maintained for the duration of the employment of each employee plus 20 years, or 30 years, whichever is longer (*See*, 29 CFR 1910.1017(m)(2)(iii)).

The following paragraphs are being amended to include the foregoing conforming amendments:

Section 1910.440 (b)(2)
Section 1910.1001 (i)(2), (j)(6)(ii)
Section 1910.1003 (g)(2)(ii)
Section 1910.1004 (g)(2)(ii)
Section 1910.1006 (g)(2)(ii)
Section 1910.1007 (g)(2)(ii)

Section 1910.1008 (g)(2)(ii)
Section 1910.1009 (g)(2)(ii)
Section 1910.1010 (g)(2)(ii)
Section 1910.1011 (g)(2)(ii)
Section 1910.1012 (g)(2)(ii)
Section 1910.1013(g)(2)(ii)
Section 1910.1014(g)(2)(ii)
Section 1910.1015(g)(2)(ii)
Section 1910.1016(g)(2)(ii)
Section 1910.1017(m)(2)–(m)(6)
Section 1910.1018(q)(3)(ii)–(q)(3)(iii);
Appendix A (Section VIII)
Section 1910.1025(n)(4)(ii)–(iii)
Section 1910.1028(l)(3)(ii)–(l)(3)(iv);
Appendix A (Section VII)
Section 1910.1029(m)(3)(ii)–(m)(3)(iv)
Section 1910.1043(k)(3)(ii)–(k)(3)(iv)
Section 1910.1044(p)(3)(ii)–(p)(3)(iv)
Section 1910.1045(q)(4)(ii)–(q)(4)(iii);
Appendix A (Section VII.D.)
Section 1910.1046(h)(2)(ii)
Section 1990.151(q)(3)(ii)–(q)(3)(iii)
Section 1990.152(q)(3)(i)–(q)(3)(iii)

Finally, these conforming amendments do not amend existing "transfer of records" provisions in specific standards; i.e., those provisions in existing standards which require employers to transfer certain mandated records to NIOSH either upon going out of business or upon the expiration of the standard's records preservation period. However, paragraph 1910.20(h), which is being incorporated into the specific standards by these conforming amendments, does contain some additional requirements, particularly involving notification of employees when an employer is going out of business. These requirements in paragraph 1910.20(h) are meant to apply to employers covered by the specific standards. Accordingly, the following sections of specific standards are being amended or added to best clarify this intent:

Section 1910.440(b)(4)
Section 1910.1017(m)(3)
Section 1910.1018(q)(4)(iv)
Section 1910.1025(n)(5)(iv)
Section 1910.1028(l)(4)(iv)
Section 1910.1029(m)(4)(iv)
Section 1910.1043(k)(4)(iv)
Section 1910.1044(p)(4)(iv)
Section 1910.1045(q)(5)(iv)
Section 1910.1046(h)(3)(iv)
Section 1990.151(q)(4)(iv)

All the above-referenced conforming amendments will go into effect when 29 CFR 1910.20 becomes legally effective.

VIII. Authority, Signature, and the Standard

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The **Federal Register** has been requested to officially file this document at 1 p.m. E.D.T. on May 21, 1980, which shall be the time of issuance of this document as provided by 29 CFR 1911.18. The time of issuance is the earliest moment that petitions for judicial review may be filed.

Accordingly, pursuant to sections 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657), the Secretary of Labor's Order 8–76 (41 FR 25059) and 29 CFR Part 1911, Chapter XVII of Title 29, the Code of Federal Regulations is hereby amended by revising section 1910.20 and by adding Appendices A and B, and by making conforming amendments to existing occupational safety and health standards in Part 1910.

Signed at Washington, D.C., this 14th day of May 1980.

Eula Bingham,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations (CFR) is amended as follows:

Subpart C—General Safety and Health Provisions

1. Section 1910.20 is revised to read as follows, including the addition of Appendices A and B:

§ 1910.20 Access to employee exposure and medical records.

(a) *Purpose.* The purpose of this section is to provide employees and their designated representatives a right of access to relevant exposure and medical records; and to provide representatives of the Assistant Secretary a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this section, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this section is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

(b) *Scope and application.* (1) This section applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

(2) This section applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

(3) This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which records are made or maintained.

(c) *Definitions.* (1) "Access" means the right and opportunity to examine and copy.

(2) "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

(3) "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

(4) "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

(5) "Employee exposure record" means a record containing any of the following kinds of information

concerning employee exposure to toxic substances or harmful physical agents:

(i) environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

(ii) biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

(iii) material safety data sheets; or

(iv) in the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

(6)(i) "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:

(A) medical and employment questionnaires or histories (including job description and occupational exposures),

(B) the results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring),

(C) medical opinions, diagnoses, progress notes, and recommendations,

(D) descriptions of treatments and prescriptions, and

(E) employee medical complaints.

(ii) "Employee medical record" does not include the following:

(A) physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and are not required to be maintained by other legal requirements,

(B) records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.), or

(C) records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

(7) "Employer" means a current employer, a former employer, or a successor employer.

(8) "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

(9) "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

(10) "Specific written consent" (i) means a written authorization containing the following:

(A) the name and signature of the employee authorizing the release of medical information,

(B) the date of the written authorization,

(C) the name of the individual or organization that is authorized to release the medical information,

(D) the name of the designated representative (individual or organization) that is authorized to receive the released information,

(E) a general description of the medical information that is authorized to be released,

(F) a general description of the purpose for the release of the medical information, and

(G) a date or condition upon which the written authorization will expire (if less than one year).

(ii) A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

(iii) A written authorization may be revoked in writing prospectively at any time.

(11) "Toxic substance or harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo- or hyperbaric pressure, etc.) which:

(i) is regulated by any Federal law or rule due to a hazard to health,

(ii) is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (*See* Appendix B),

(iii) has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to, the employer, or

(iv) has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

(d) *Preservation of records.* (1) Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

(i) *Employee medical records.* Each employee medical record shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period;

(ii) *Employee exposure records.* Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(A) Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathmematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(B) Material safety data sheets and paragraph (c)(5)(iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

(iii) *Analyses using exposure or medical records.* Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

(2) Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

(e) *Access to records.* (1) *General.* (i) Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time,

place, and manner, but in no event later than fifteen (15) days after the request for access is made.

(ii) Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

(A) a copy of the record is provided without cost to the employee or representative,

(B) the necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record, or

(C) the record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

(iii) Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that

(A) An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

(B) An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

(iv) Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.

(2) *Employee and designated representative access.* (i) *Employee exposure records.* Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, exposure records relevant to the employee consist of:

(A) records of the employee's past or present exposure to toxic substances or harmful physical agents,

(B) exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(C) records containing exposure information concerning the employee's workplace or working conditions, and

(D) exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

(ii) *Employee medical records.* (A) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in paragraph (e)(2)(ii)(D) below.

(B) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. Appendix A to this section contains a sample form which may be used to establish specific written consent for access to employee medical records.

(C) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(*1*) consult with the physician for the purposes of reviewing and discussing the records requested,

(*2*) accept a summary of material facts and opinions in lieu of the records requested, or

(*3*) accept release of the requested records only to a physician or other designated representative.

(D) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(E) Nothing in this section precludes a physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

(iii) *Analyses using exposure or medical records.*

(A) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(B) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.

(3) *OSHA access.* (i) Each employer shall, upon request, assure the immediate access of representatives of the Assistant Secretary of Labor for Occupational Safety and Health to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.

(ii) Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

(f) *Trade secrets.* (1) Except as provided in paragraph (f)(2) of this section, nothing in this section precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

(2) Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide

access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

(3) Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

(g) *Employee information.* (1) Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following:

(i) the existence, location, and availability of any records covered by this section;

(ii) the person responsible for maintaining and providing access to records; and

(iii) each employee's rights of access to these records.

(2) Each employer shall make readily available to employees a copy of this standard and its appendices, and shall distribute to employees any informational materials concerning this standard which are made available to the employer by the Assistant Secretary of Labor for Occupational Safety and Health.

(h) *Transfer of records.* (1) Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

(2) Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

(3) Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

(i) transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard: or

(ii) notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

(4) Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

(i) *Appendices.* The information contained in the appendices to this section is not intended, by itself, to create any additional obligations not otherwise imposed by this section nor detract from any existing obligation.

(j) *Effective date.* This section shall become effective on August 21, 1980. All obligations of this section commence on the effective date except that the employer shall provide the information required under paragraph (g)(1) of this section to all current employees within sixty (60) days after the effective date.

Appendix A to § 1910.20—Sample Authorization Letter for the Release of Employee Medical Record Information to a Designated Representative

I, ————, (full name of worker/patient) hereby authorize ———— (individual or organization holding the medical records) to release to ———— (individual or organization authorized to receive the medical information), the following medical information from my personal medical records:

_____

_____

(Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ————, but I do not give permission for any other use or re-disclosure of this information.

(Note.—Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

_____

_____

_____

_____

_____

_____

Full name of Employee or Legal Representative

_____

Signature of Employee or Legal Representative

_____

Date of Signature

Appendix B to § 1910.20—Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS) [1]

The final standard, 29 CFR 1910.20, applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents (paragraph (b)(2)). The term "toxic substance or harmful physical agent" is defined by paragraph (c)(11) to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analyses of these records) relevant to employees exposed to the substance.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS, and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by section 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669(a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Foreward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment. (p. iii)

"This Registry contains 124,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry. (p. xiii)

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard

[1] On April 24, 1980, the Director of the Federal Register approved for incorporation by reference into 29 CFR 1910, the 1978 edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances (the Registry). (See 29 CFR 1910.20 (c)(11)(ii)).

evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous. (p. xiii)

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters. (p. xiii)

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences. (p. xiv)"

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (Order GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchased from the GPO for $14.00 (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at the OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or at any OSHA Regional or Area Office (*See*, major city telephone directories under United States Government-Labor Department).

Subpart T—Commercial Diving Operations

2. Section 1910.440 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

s1910.440 Recordkeeping requirements.

* * * * *

(b) * * *

(2) Records and documents required by this standard shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i). Safe practices manuals (s1910.420), depth-time profiles (s1910.422), recordings of dives (s1910.423), decompression procedure assessment evaluations (s1910.423), and records of hospitalizations (s1910.440) shall be provided in the same manner as employee exposure records or analyses using exposure or medical records. Equipment inspections and testing records which pertain to employees (s1910.430) shall also be provided upon request to employees and their designated representatives.

* * * * *

(4) After the expiration of the retention period of any record required to be kept for five (5) years, the employer shall forward such records to the National Institute for Occupational Safety and Health, Department of Health and Human Services. The employer shall also comply with any additional requirements set forth at 29 CFR 1910.20(h).

* * * * *

Subpart Z—Toxic and Hazardous Substances

3. Section 1910.1001 is amended by revising paragraphs (i)(2) and (j)(6)(ii) to read as follows:

s1910.1001 Asbestos.

* * * * *

(i) * * *

(2) *Access.* Employee exposure records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i).

* * * * *

(j) * * *

(6) * * *

(ii) *Access.* Records of the medical examinations required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i). These records shall also be provided upon the request to the Director of NIOSH. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer of the examined employee all the information specifically required by this paragraph, and any other medical information related to occupational exposure to asbestos fibers.

4. Section 1910.1003 is amended by revising paragraph (g)(2)(ii) to read as follows:

s1910.1003 4-Nitrobiphenyl.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i). These records shall also be provided upon request to the Director.

* * * * *

5. Section 1910.1004 is amended by revising paragraph (g)(2)(ii) to read as follows:

s1910.1004 alpha-Naphthylamine.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i). These records shall also be provided upon request to the Director.

* * * * *

6. Section 1910.1006 is amended by revising paragraph (g)(2)(ii) to read as follows:

s1910.1006 Methyl chloromethyl ether.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i). These records shall also be provided upon request to the Director.

* * * * *

7. Section 1910.1007 is amended by revising paragraph (g)(2)(ii) to read as follows:

s1910.1007 3-3'-Dichlorobenzidine (and its salts).

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)-(e) and (g)-(i). These records shall also be provided upon request to the Director.

* * * * *

8. Section 1910.1008 is amended by revising paragraph (g)(2)(ii) to read as follows:

s1910.1008 bis-Chloromethyl ether.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

9. Section 1910.1009 is amended by revising paragraph (g)(2)(ii) to read as follows:

s 1910.1009 beta-Naphthylamine.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

10. Section 1910.1010 is amended by revising paragraph (g)(2)(ii) to read as follows:

s 1910.1010 Benzidene.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

11. Section 1910.1011 is amended by revising paragraph (g)(2)(ii) to read as follows:

s 1910.1011 4-Aminodiphenyl.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

12. Section 1910.1012 is amended by revising paragraph (g)(2)(ii) to read as follows:

s 1910.1012 Ethyleneimine.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

13. Section 1910.1013 is amended by revising paragraph (g)(2)(ii) to read as follows:

s 1910.1013 beta-Propiolactone.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

14. Section 1910.1014 is amended by revising paragraph (g)(2)(ii) to read as follows:

s 1910.1014 2-Acetylaminofluorene.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

15. Section 1910.1015 is amended by revising paragraph (g)(2)(ii) to read as follows:

s 1910.1015 4-Dimethylaminoazobenzene.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

16. Section 1910.1016 is amended by revising paragraph (g)(2)(ii) to read as follows:

s 1910.1016 N-Nitrosodimethylamine.

* * * * *

(g) * * *

(2) * * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

* * * * *

17. Section 1910.1017 is amended by revising the introductory text of paragraph (m)(2) and paragraph (m)(3) and removing paragraphs (m)(4), (m)(5) and (m)(6) to read as follows:

§ 1910.1017 Vinyl chloride.

* * * * *

(m) * * *

(2) Records of required monitoring and measuring and medical records shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i). These records shall be provided upon request to the Director. Authorized personnel rosters shall also be provided upon request to the Assistant Secretary and the Director.

(i) * * *

(ii) * * *

(iii) * * *

(3) In the event that the employer ceases to do business and there is no successor to receive and retain his records for the prescribed period, these records shall be transmitted by registered mail to the Director, and each employee individually notified in writing of this transfer. The employer shall also comply with any additional requirements set forth in 29 CFR 1910.20(h).

18. Section 1910.1018 is amended by revising paragraphs (q)(3)(ii) and Appendix A Section VIII, by removing paragraph (q)(3)(iii) and by adding paragraph (q)(4)(iv) to read as follows:

s1910.1018 Inorganic arsenic.

* * * * *

(q) * * *

(3)* * *

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i).

(4)* * *

(iv) The employer shall also comply with any additional requirements involving the transfer of records set in 29 CFR 1910.20(h).

* * * * *

Appendix A—Inorganic Arsenic Substance Information Sheet

* * * * *

VIII. Access to Records

You or your representative are entitled to records of your exposure to inorganic arsenic and your medical examination records if you request your employer to provide them.

* * * * *

19. Section 1910.1025 is amended by revising paragraphs (n)(4)(ii), removing paragraph (n)(4)(iii) and by adding paragraph (n)(5)(iv) to read as follows:

s1910.1025 Lead.

* * * * *

(n)* * *

(4)* * *

(ii) Environmental monitoring, medical removal, and medical records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (2)–(i). Medical removal records shall be provided in the same manner as environmental monitoring records.

(5)* * *

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1910.20(h).

* * * * *

20. Section 1910.1028 is amended by revising paragraphs (l)(3)(ii) and Appendix A Section VII, by removing paragraphs (l)(3)(iii) and (l)(3)(iv) and by adding paragraph (l)(4)(iv) to read as follows:

s1910.1028 Benzene.

* * * * *

(1)* * *

(3)* * *

(ii) Employee exposure measurement records and employee medical records required by this section shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20(a)–(e) and (g)–(i).

(4) * * *

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1910.20(h).

* * * * *

Appendix A—Substance Safety Data Sheet, Benzene

* * * * *

VII. Access to Records.

You or your representative are entitled to see the records of your exposure to benzene and your medical examination records if you request your employer to provide them.

* * * * *

21. Section 1910.1029 is amended by revising paragraphs (m)(3)(ii), removing paragraphs (m)(3)(iii) and (m)(3)(iv), and by adding paragraph (m)(4)(iv) to read as follows:

s1910.1029 Coke oven emissions.

* * * * *

(m) * * *

(3) * * *

(ii) Employee exposure measurement records and employee medical records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20(a)–(e) and (g)–(i).

(4) * * *

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1910.20(h).

* * * * *

22. Section 1910.1043 is amened by revising paragraphs (k)(3)(ii) by removing paragraphs (k)(3)(iii) and (k)(3)(iv) and by adding paragraph (k)(4)(iv) to read as follows:

s1910.1043 Cotton dust.

* * * * *

(k) * * *

(3) * * *

(ii) Employee exposure measurement records and employee medical records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i).

(4) * * *

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1910.20(h).

* * * * *

23. Section 1910.1044 is amended by revising paragraphs (p)(3)(ii) by removing paragraphs (p)(3)(iii) and (p)(3)(iv) and by adding paragraph (p)(4)(iv) to read as follows:

s1910.1044 1,2-Dibromo-3-chloropropane.

* * * * *

(p) * * *

(3) * * *

(ii) Employee exposure monitoring records and employee medical records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20(a)–(e) and (g)–(i).

(4) * * *

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1910.20(h).

* * * * *

24. Section 1910.1045 is amended by revising paragraphs (q)(4)(ii) and Appendix A section VI, D by removing paragraph (q)(4)(iii) and by adding paragraph (q)(5)(iv) to read as follows:

s1910.1045 Acrylonitrile.

* * * * *

(q) * * *

(4) * * *

(ii) Records required by paragraphs (q)(1)–(q)(3) of this section shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20 (a)–(e) and (q)–(i). Records required by paragraph (q)(1) shall be provided in the same manner as exposure monitoring records.

(5) * * *

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1910.20(h).

* * * * *

Appendix A—Substance Safety Data Sheet for Acrylonitrile

* * * * *

VI. Access to Information

* * * * *

D. Your employer is required to release your exposure and medical records to you or your representative upon your request.

* * * * *

25. Section 1910.1046 is amended by revising paragraph (h)(2)(ii) and by adding paragraph (h)(3)(iv) to read as follows:

s1910.1046 Exposure to cotton dust in cotton gins.

* * * * *

(h) * * *

(2) * * *

(ii) Employee medical records shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20(a)–(e) and (g)–(i).

(3) * * *

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1910.20(h).

* * * * *

26. Section 1990.151 is amended by revising paragraphs (q)(3)(ii) by removing paragraph (q)(3)(iii) and by adding paragraph (q)(4)(iv) to read as follows:

s1910.151 Model Standard pursuant to section 6(b) of the Act.

* * * * *

(q) * * *
(3) * * *
(ii) Employee exposure measurement records and employee medical records required by this section shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20(a)–(e) and (g)–(i).
(4) * * *
(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1910.20(h).
* * * * *

27. Section 1990.152 is amended by revising paragraphs (q)(3)(i) and (q)(3)(ii) and removing (q)(3)(iii) to read as follows:

s1990.152 Model Emergency Temporary Standard pursuant to section 6(c).

* * * * *
(q) * * *
(3) * * *
(i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.
(ii) Employee exposure measurement records and employee medical records required by this section shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1990.20(a)–(e) and (g)–(i).
* * * * *

(Secs. 6(b), 8(c) and 8(g) (84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657), the Secretary of Labor's Order 8–76 (41 FR 25059) and 29 CFR Part 1911, Chapter XVII of Title 29)

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29 CFR Part 1913

Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records

AGENCY: The Occupational Safety and Health Administration of the United States Department of Labor (OSHA).

ACTION: Final rule.

SUMMARY: These rules of agency practice and procedure, promulgated today as a new 29 CFR 1913.10, govern OSHA access to personally identifiable employee medical information contained in medical records. The rules are structured to protect the substantial personal privacy interests inherent in identifiable medical records, while also permit OSHA to make beneficial use of these records for proper occupational safety and health purposes. The rules regulate the manner in which OSHA will seek access to employee medical records, and how the medical information will be protected once in the agency's possession.

EFFECTIVE DATE: August 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Department of Labor, OSHA, Office of Public Affairs, Third Street and Constitution Avenue, NW., Room N–3641, Washington, DC 20210 (202–523–8151). Copies of this document may be obtained at any time by request to the OSHA Office of Public Affairs at the address or telephone number listed above, or by contacting any OSHA regional or area office.

SUPPLEMENTARY INFORMATION:

I. Introduction

The statement of reasons accompanying these regulations (the preamble) is divided into four parts, numbered I through IV. The following is a table of contents for this preamble:

I. Introduction
II. Pertinent Legal Authority
III. Summary and Explanation of the Regulations
A. Paragraph (a)—*General policy.*
B. Paragraph (b)—*Scope and application.*
C. Paragraph (c)—*Responsible persons.*
D. Paragraph (d)—*Written access orders.*
E. Paragraph (e)—*Presentation of written access order and notice to employees.*
F. Paragraph (f)—*Objections concerning a written access order.*
G. Paragraph (g)—*Removal of direct personal identifiers.*
H. Paragraph (h)—*Internal agency use of personally identifiable medical information.*
I. Paragraph (i)—*Security procedures.*
J. Paragraph (j)—*Retention and destruction of records.*
K. Paragraph (k)—*Results of an agency analysis using personally identifiable employee medical information.*
L. Paragraph (l)—*Annual report.*
M. Paragraph (m)—*Inter-agency transfer and public disclosure.*
N. Paragraph (n)—*Effective date.*
IV. Authority, Signature, and the Regulations

Part III is a provision-by-provision discussion of the regulations in lettered paragraphs corresponding to the lettered paragraphs of the regulations. It provides a brief summary of each provision and the evidence and rationale supporting it. References to the rulemaking record in the text of the preamble are in parentheses, and the following abbreviations have been used:

1. Ex. : Exhibit number to Docket H–112
2. Tr. : Transcript page number

These rules of agency practice and procedure are issued pursuant to sections 8(c)(1) and 8(g) of the Occupational Safety and Health Act of 1970 ("the Act") (84 Stat. 1599, 29 U.S.C. 657), section (e) of the Privacy Act (5 U.S.C. 552a(e)), and the government's general housekeeping statute (5 U.S.C. 301).

A. Background

The Occupational Safety and Health Administration (OSHA) has today published a final standard, 29 CFR 1910.20, governing access to employee exposure and medical records. Subparagraph (e)(3) of section 1910.20 provides for unconsented OSHA access to personally identifiable employee medical records. The need for OSHA access to employee medical records, and the decisionmaking involved in providing for unconsented OSHA access, are explained in the preamble accompanying 29 CFR 1910.20. The final regulations set forth below as § 1913.10 of 29 CFR establish agency procedures governing OSHA access to these records. These rules of agency practice and procedure serve to (1) control the circumstances under which OSHA seeks access to personally identifiable medical records, and (2) protect personally identifiable medical information once it has been obtained by the agency. These procedures are intended to preclude possible misuse of employee medical records, while at the same time enable medical record information to play a constructive role in agency efforts directed to the prevention of occupational injury and disease.

B. History of the regulations

These final regulations, 29 CFR 1913.10, have been developed in concert with the promulgation of 29 CFR 1910.20. 29 CFR 1910.20 was first published on July 19, 1978 (43 FR 31019) as an interim final rule. This rule required the indefinite retention of employee exposure and medical records, and required that these records be made available upon request to OSHA and to NIOSH (the National Institute for Occupational Safety and Health). This interim final rule was followed by a proposed rule published on July 21, 1978 (43 FR 31371) which proposed to expand 29 CFR 1910.20 to include employee and employee representative access to employee exposure and medical records, whether or not these records were subject to specific occupational safety and health standards. The proposed rule also set a definite minimal time period for the retention of these records. OSHA gave interested persons until September 22, 1978 to present written comments, views or arguments on any issue raised by the proposal. A total of 211 initial comments were received. Based on the

widespread interest evidenced by these comments, OSHA announced on October 6, 1978 (43 FR 46322) a schedule for public hearings on this proposal.

Hearings were held in Washington, DC from December 5–8, 1978 and from January 3–5, 1979; in Chicago, Illinois from December 12–13, 1978 and from January 9–10, 1979; and in San Francisco, California on December 15, 1978. A total of 85 individuals and organizations gave oral presentations, and the hearing transcript numbers 2542 pages.

OSHA has in the past exercised its authority to seek access to employee exposure and medical records as part of its regulatory and enforcement powers. For example, specific occupational safety and health standards have always provided for OSHA access to the records required by these standards. Nevertheless, inclusion of a general OSHA access provision in both the interim final rule and the proposed rule raised for public comment the question of the agency's policies and procedures governing access to, and use of, employee medical records. Numerous participants noted OSHA's lack of written procedures and policies concerning access to, and handling of, often highly sensitive medical information, and indicated that appropriate mechanisms protecting the confidentiality of accessed records should be developed (Cal. Dept. of Industrial Relations, Ex. 2(132), p. 3; National Commission on the Confidentiality of Health Records (NCCHR), Ex. 2(151), p. 2; Outboard Marine Corp., Ex. 2(183), pp. 6–8).

OSHA agreed with these concerns, and accordingly developed and made available for public comment draft administrative guidelines governing OSHA access to employee medical records. A copy of these draft guidelines was placed in the public rulemaking record (Docket No. H–112) of the proposed rule on November 24, 1978. OSHA official Grover Wrenn, in his opening statement at the December 5, 1978 hearings, announced the public availability of the guidelines (Tr. 15–16). On January 19, 1979, an additional public notice of the availability of the draft guidelines was published in the **Federal Register** (44 FR 3994). In that notice, OSHA gave the public until March 1, 1979, to comment on the draft guidelines. In addition, OSHA announced its intention to issue the final guidelines as regulations and to limit their scope to confidential medical information, and not apply them to trade secret information. On February 27, 1979 (44 FR 11096) the comment period was extended to March 30, 1979. A total of 43 comments were received into a separate docket created to receive these comments (Docket No. H–112A). The regulations below are based on the total record in Dockets No. H–112 and H–112A and on the agency's experience and expertise.

II. Pertinent Legal Authority

The legal authority for these procedural regulations is found in sections 8(c)(1) and 8(g)(2) of the Occupational Safety and Health Act ("The Act"), 29 U.S.C. 657; in section (e) of the Privacy Act, 5 U.S.C. 552a(e); and in 5 U.S.C. 301.

Section 8(c)(1) of the Act provides that:

> [E]ach employer shall make, keep, preserve, and make available to the Secretary [of Labor] or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses.

Employee medical records are included within the type of records addressed by this provision.

Section 8(g)(2) is the general rulemaking authority of the Act and states that:

> [T]he Secretary and the Secretary of Health, Education, and Welfare, shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under the Act, including rules and regulations dealing with the inspection of an employee's establishment.

These procedural regulations are deemed necessary to enable beneficial use of employee medical records consistent with the employee's right of privacy.

The Privacy Act, 5 U.S.C. 552a, imposes specific obligations on agencies to protect personally identifiable records within their possession. In particular, paragraphs (9) and (10) of section (e) of the Privacy Act require each agency that maintains a system of covered records to:

> (9) establish rules of conduct for persons involved in the design, development, operation and maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance; (and)
>
> (10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, invonvenience, or unfairness to any individual on whom information is maintained . . .

Part 70a of 29 CFR constitutes the Department of Labor's implementation of the Privacy Act. The regulations set forth below provide additional procedures with respect to personally identifiable employee medical information which OSHA seeks to examine or obtain.

Section 301 of 5 U.S.C. is the government's general "housekeeping" statute, and authorizes the promulgation of regulations of this nature. It provides:

> The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

In addition, the agency has reviewed the provisions of the regulations pursuant to the National Environmental Policy Act of 1969 and Council on Environmental Quality Regulations (40 CFR Part 1500). The agency has determined that no significant environmental impact will result from the implementation of these rules.

III. Summary and Explanation of the Regulations

The administrative rules of practice and procedure set forth below maintain the same structure and approach as the draft guidelines, but have been significantly refined in light of the record and the agency's evaluation of it. The provisions have been tailored to the way in which OSHA is structured, managed, and staffed, and would not necessarily be pertinent to any other Federal agency. In forming these procedures, the agency considered both the importance of protecting the right to personal privacy and the equally important interest in facilitating the beneficial use of medical record information. The resulting regulations represent, in OSHA's view, an appropriate balance between the two interests. It is appropriate to stress that OSHA has historically made only limited use of employee medical records, and this policy will not be changed by these regulations. These procedural regulations will govern those situations, primarily concerning employee exposure to toxic substances, where medical record information is highly relevant to, and sometimes crucial to, the agency's performance of

its statutory functions. As a result, these regulations will improve the agency's protection of personally identifiable information, but will not by themselves serve to expand agency attempts to seek use of this information.

A. Paragraph (a)—*General policy*

The final rule expands the "General Policy" section of the draft guidelines into two paragraphs, "General policy" and "Scope and application." Paragraph (a), General policy, notes the importance of both personal privacy and the value of medical records to OSHA's performance of statutory functions. The central constraints on OSHA access to personally identifiable medical information which are created by the regulations are then highlighted. These policies are implemented by the specific provisions which follow.

The final rule omits a waiver provision. The waiver clause of the draft guidelines was criticized by numerous participants as unjustified and as demonstrating a half-hearted agency commitment to personal privacy (USWA, Ex. 160, p.18; Belair (NCCHR), Tr. 1874; SOCMA, Ex. 167(9–36); ORC, Ex. 159, p. 2; National Steel Co., Ex. 157, p. 2; Borg-Warner Chemicals, Ex.167(9–22)). The agency orginally included a waiver clause due to a concern that unforeseen emergency situations could arise where the literal application of the guidelines would frustrate accomplishment of statutory responsibilities. Having reconsidered the issue in view of these comments the agency deleted the provision. The agency is convinced that the final regulations can accommodate all access situations, even emergency situations where the quickest possible action is essential.

B. Paragraph (b)—*Scope and application*

Paragraph (b) defines the circumstances under which the procedural regulations will apply. Except as provided in paragraphs (b)(3)–(b)(6), the regulations apply to "all requests by OSHA personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provisions of 29 CFR 1910.20(e)." The regulations thus establish the framework under which all agency efforts to examine records containing employee medical information are to be conducted.

The applicability of the regulations turns on the definition of what constitutes personally identifiable information. Subparagraph (b)(2) states as follows:

> For the purposes of this section, "personally identifiable employee medical information" shall mean employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e. g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

This definition follows the recommendation of the American Medical Records Association (AMRA) (Ex. 82, pp. 1–2; *See also*, Birdbord (NIOSH), Ex. 22, p. 5), and eplicitly acknowledges the fact that a wide variety of data can in certain situations be used indirectly to identify specific employees (Bierbaum (NIOSH), Tr. 506). These regulations establish procedures to limit access to only that data necessary to accomplish a statutory purpose. OSHA will on occasion need to consider the factors of age, sex, race, height, weight, duration of employment, place of birth, etc., to properly evaluate specific medical tests (Dr. Whorton, Ex. 11, p. 21, Tr. 299). Where this kind of information is reported in a fashion which could reasonably be used under the circumstances to identify specific employees, the information is treated no differently than when direct identifiers are attached. Conversely, where information cannot reasonably be used under the circumstances to identify specific employees, these regulations do not apply.

Subparagraph (b)(3), for the sake of clarity, excludes from the scope of the rule several forms of information which do not constitute "personally identifiable employee medical information." First, aggregate employee medical information and medical records on individual employees which are not in a personally identifiable form are excluded. Protection of the personal privacy of employees requires only that *personally identifiable* medical information be protected. Many employers periodically analyze the contents of employee medical records as a part of their occupational medical programs, and this practice is a sound one. Research studies, statistical analyses of raw medical data, and listings of biological monitoring results (stripped of identifiers) can be valuable tools in detecting, controlling, and preventing occupational disease. These devices do not impinge on the personal privacy expectations of any specific employee, and could not be used adversely against specific employees. They should be readily available upon request to public health agencies like OSHA.

Subparagraph (b)(3) also excludes the OSHA injury and illness log (29 CFR Part 1904), death certificates, and employee exposure records from coverage by these regulations. Biological monitoring test results treated by 29 CFR 1910.20(c)(5) or by specific occupational safety and health standards as exposure records are also excluded. These kinds of personal records may on occasion be of such significance that they should be treated with discretion and care (*See*, HRG, Tr. 2039–40, Ex. 2(161), p. 3, Ex. 167(9–40), pp. 1–2), and several participants recommended that at least exposure records should be covered by the administrative regulations (*Id.*; Phillips Petroelum Co., Ex. 167(9–23), p. 2; SOHIO, Ex. 167(9–29), p. 2). The agency, however, has not done so because (1) these documents may be already widely known within the workplace; (2) the privacy interests involved in these records are not of comparable magnitude to those involved in identifiable medical records; (3) these records are of such occupational health and safety importance and they will be so frequently used by various agency personnel that rigid approval and security procedures are both impractical and inappropriate; and (4) agency discretion and care can adequately protect whatever privacy interests apply to these records without having to impose these regulations.

By excluding employee exposure records, the language of subparagraph (b)(3) also serves to exclude trade secret information from coverage by these regulations. Although several participants urged that these administrative regulations apply to trade secrets (MCA, Ex. 167(9–38); DuPont, Ex. 167(41), p. 3), and the draft guidelines so provided (Ex. 167(2)), the agency believes that existing regulations and agency procedures are sufficient to protect trade secret information (*See*, 18 U.S.C. 1905; Section 15 of the Act, 29 U.S.C. 664; 29 CFR 1903.9; OSHA Field Operations Manual, Ex. 113). Attention has not been drawn by any participant to deficiencies of current agency procedures concerning trade secrets, and the agency sees no need to expand the scope of these administrative regulations beyond the privacy interests involved in personally identifiable medical records (*See*, HRG, Ex. 167(9–10), pp. 1–2; AFL–CIO, Ex. 152, pp. 60–61; USWA, Ex. 160, p. 17).

Subparagraphs (b)(4)–(b)(6) exclude three situations where agency access to personally identifiable employee medical information need not be regulated by all requirements of these

regulations. Subparagraph (b)(4) excludes situations where OSHA compliance personnel seeks to examine medical records for the sole purpose of verifying employer compliance with mandated recordkeeping requirements. All comprehensive OSHA health standards contain detailed medical surveillance programs with associated recordkeeping provisions (*See*, 29 CFR 1910.1001–1046). Access to medical records is necessary and appropriate to verify compliance with these requirements, as well as the requirements of 29 CFR 1910.20. No analysis is made of the medical content of the file; rather, the compliance officer checks to see that required data is present in the file. Since no personally identifiable medical information is either substantively reviewed or obtained, and no special qualifications are necessary to carry out this task, it is inappropriate to require the prior approval of the Assistant Secretary and the OSHA Medical Records Officer for these routine inquiries. The final regulations provide that these inquiries "shall be conducted on-site and, if requested, under the observation of the recordholder, and the OSHA compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance."

Subparagraph (b)(5) excludes "agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation." These litigation situations, including post-citation discovery requests, will generally be controlled by attorneys in the Office of the Solicitor of Labor or the Department of Justice, and not by the Assistant Secretary. Traditional protective orders and other devices may in specific cases be needed to protect personal privacy, but this is a matter which is best handled through the rules of civil and criminal procedure, and may be the subject of further directives from the Solicitor of Labor.

Subparagraph (b)(6) excludes from these procedural regulations situations "where a written directive by the Assistant Secretary authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results." OSHA envisions situations where appropriately trained field personnel should be authorized in general to conduct limited reviews of specific kinds of medical information. Some of this medical information could be part of a medical surveillance program mandated by a specific occupational safety and health standard. Examples include hemoglobin and kidney function tests required under the OSHA lead standard (*See*, 29 CFR 1910.1025(j)(3)(ii)), as well as written medical opinions which under the lead standard can serve to initiate special health protection for employees (*See*, 29 CFR 1910.1025 (j)(3)(v), (k)(1)(ii)). In other cases, agency access to specific biological monitoring tests may be extremely important to adequately investigate potential occupational health problems even though the biological monitoring tests were not mandated by existing standards. Possible examples include cholinesterase activity in the blood of pesticides workers, or pulmonary function testing of workers exposed to silica. OSHA may provide its professional personnel with the necessary training either to substantively evaluate these limited test results, or to initially screen them to identify possible problem areas for physicians or other more qualified personnel to review. The agency desires to maintain the flexibility generally to authorize these kinds of limited reviews of medical information, and this is best regulated by written directive by the Assistant Secretary. Where no written directive has been issued, however, these regulations apply.

Finally, subparagraph (b)(7) notes that, "Even if not covered by the terms of this section, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees." Due to the personal privacy interests involved, attention is drawn to Freedom of Information Act and Privacy Act regulations (29 CFR 70.26 and 70a.3) which could enable the agency to preclude further disclosure of this information to the public once in the agency's possession. This language in subparagraph (b)(7) will build upon the care which OSHA has historically given to information from and concerning specific employees. Agency personnel protect this information not only due to the inherent privacy interests involved, but also due to other adverse consequences such as possible employment discrimination which could result from an employer's learning the identity of employee sources of information.

C. Paragraph (c)—*Responsible persons*

Paragraph (c), Responsible persons, highlights the special responsibilities of key OSHA personnel to the effectuation of these administrative regulations. Paragraph (c) is largely a summary of duties established by other paragraphs, but is included to focus attention on the accountability of specific personnel. In this regard, the final regulations have been significantly modified from the draft guidelines. All references to the Director of Field Operations Coordination and a Document Control Officer have been deleted due to the judgment that these provisions added nothing meaningful to current internal agency management structures and responsibilities. OSHA expects that internal agency directives will be issued to add greater specificity to, and implementing mechanisms for, the requirements of these regulations. There is no need to include discussion of this in the body of the regulations, since internal directives already govern the manner in which the agency implements new policy (*See*, Ex. 190). Detailed provisions in the 'authorized employee' portion of the draft guidelines concerning who may have access to records, security of records, and agency contractors have also been deleted from the "Responsible persons" paragraph, and relocated elsewhere in the regulations.

Paragraph (c) of the final regulations emphasizes the responsibilities of the Assistant Secretary and the OSHA Medical Records Officer. Paragraph (a) indicates that these procedural regulations are based on two central principles. First, there should be a thorough review of all efforts to examine or copy personally identifiable employee medical information before the information is obtained; and second, personally identifiable information must be carefully protected once obtained. The Assistant Secretary is responsible for the overall administration and implementation of these principles. Several participants urged that the Assistant Secretary be personally involved in decisions to seek access to personally identifiable medical information (Weiner, Ex. 9A, p. 44; Stulberg (HRG), Tr. 2040; Seminario (AFL–CIO), Tr. 644; Nat. Steel Corp., Ex. 157, pp. 2–3; USWA, Ex. 160, p. 18; Continental Oil Co., Ex. 167(9–10), p. 2). Since the agency agrees that this involvement would be beneficial, the final regulations provide that the Assistant Secretary is the ultimate decisionmaker concerning requests for OSHA access to employee medical information subject to this section. As provided in the draft guidelines, the Assistant Secretary also makes final OSHA determinations concerning requests for inter-agency transfers or public disclosures of personally

identifiable employee medical information subject to this section.

The OSHA Medical Records Officer (MRO) has been given several key responsibilities in the final regulations. This official is to be designated by the Assistant Secretary and is to report directly to the Assistant Secretary on records access matters. The MRO must make recommendations to the Assistant Secretary on whether to approve or deny written access orders, and will serve as the central reviewer of the sufficiency of these documents and their supporting justifications (paragraph (d)). The MRO is also made responsible for responding to employee, collective bargaining agent, and employer objections to written access orders (paragraph (f)), regulating the use of direct personal identifiers (paragraph (g)), regulating the internal use and security of personally identifiable medical information (paragraphs (h)–(k)), assuring that the results of investigations are communicated to employees (paragraph (k)), preparing an annual report of OSHA's experience under this section (paragraph (l)), and assuring that advance notice is given of intended inter-agency transfers or public disclosures (paragraph (m)).

Similar to the draft guidelines, the final regulations state that the MRO shall be an "OSHA employee with experience or training in the evaluation, use, and privacy protection of medical records." Several participants urged that the position of MRO be limited to physicians, or that the necessary qualifications of the MRO be better defined (UAW, Ex. 165, p. 2; AMA, Ex. 167(9–12), pp. 2–3; Phillips Petroleum Co., Ex. 167(9–23), pp. 2–3; Shell Oil Co., Ex. 167(9–28), p. 3; Dow Chemical Co., Ex. 167(9–41), p. 5). The agency agrees that a senior official with a specialized background should occupy this sensitive position. The agency is not convinced, however, that only physicians could perform the duties of a MRO; thus the regulations are deliberately flexible.

The other person with key responsibilities in each instance of OSHA access to personally identifiable medical information is the person to be designated as the 'Principal OSHA Investigator'. The draft guidelines discussed the duties of an 'authorized employee,' but various participants pointed out that uncertainty existed as to who and how many individuals were responsible for using medical records and preserving their security (ORC, Ex. 159, p. 2; SOHIO, Ex. 167(9–29), p. 2; NIOSH, Ex. 167(9–37), p. 2; HRG, Ex. 167(9–40), pp. 2–3; Dow Corning Co., Ex. 167(9–41), p. 4). To clarify OSHA's intent, the final regulations fix primary responsibility on the person designated as the Principal OSHA Investigator to assure that the examination and use of personally identifiable medical information is performed in the manner prescribed by these procedural regulations. Other paragraphs establish who else can have access to this medical information, and how the information is to be protected. No significance is attached by the final regulations on who initiated a request to review records. The Principal OSHA Investigator, however, must be professionally trained in medicine, public health or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.) when access is pursuant to a written access order. Several participants urged that this person's qualifications be better defined (Shell Oil Co., Ex. 167(9–28), p. 3; Mid-Atlantic Legal Foundation, Ex. 167(9–32), p. 2). Rather than attempt this in advance, the final regulations opt for a case-by-case assessment of each Principal OSHA Investigator's qualifications as part of the approval criteria for a written access order (*infra*).

D. Paragraph (d)—*Written access orders*

Paragraph (d), Written access orders, establishes the most formal administrative procedure by which OSHA will seek access to personally identifiable employee medical information. With the exception of two circumstances discussed at the end of the paragraph, "each request by an OSHA representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder shall be made pursuant to a written access order. * * *" Subparagraph (d)(2) sets criteria to guide the exercise of the agency's discretion to seek access to identifiable medical information, and subparagraph (d)(3) sets forth the content of the written access order. To be valid, a written access order must be approved by the Assistant Secretary upon the recommendation of the OSHA Medical Records Officer. The approval process for a written access order is meant to assure management control over the exercise of OSHA's discretion, and has been structured in a fashion comparable to the approval process for an administrative subpoena. In practice, a written access order may constitute, or be accompanied by, an administrative subpoena.

Subparagraph (d)(2) establishes the substantive criteria which are to guide the Assistant Secretary's discretion in approving written access orders. First, the Assistant Secretary and the MRO must consider whether the medical information to be examined or copied is "relevant to a statutory purpose and there is a need to gain access to this personally identifiable information." This is at face value less strict than the 'substantial need' requirement of the draft guidelines, and the recommendations of several participants that something more than mere relevance or need should be required (NCCHR, Ex. 2(151), p. 4, Belair (NCCHR), Tr. 1861, 1883; HRG, Ex. 2(161), p. 4; Shell Oil Co., Ex. 167(9–28), p. 4; SOHIO, Ex. 167(9–29), p. 1; SOCMA, Ex. 167(9–36), p. 8; MCA, Ex. 167(9–38), p. 30; Weiner, Ex. 9A, p. 44). Rather than establish rigid or more specific criteria, the final regulations permit case-by-case determinations by the Assistant Secretary and the MRO to assure that access is sought only where there is a genuine need to do so. OSHA believes that a finding of relevance and need by the agency's highest official is a sufficient safeguard against excessive use of the agency's authority to obtain access to personally identifiable employee medical information (*See*, NCCHR, Ex. 2(151), pp. 6–7; Dr. Wegman, Tr. 235; Dr. Whorton, Ex. 11, p. 18; Annas, Tr. 1752–54, 1757–58; Stulberg (HRG), Tr. 2040; USWA, Ex. 160, p. 18; SOCMA, Ex. 167(9–36), p. 8).

Subparagraph (d)(2) next states that consideration must be given to whether the personally identifiable medical information subject to the access order is "limited to only that information needed to accomplish the purpose for access." This will preclude governmental access to the kind of extraneous medical information which the agency can identify in advance as unnecessary to the purpose for access. This requirement follows suggestions that the agency define what medical information is sought, and limit the information sought to just that needed to accomplish the purpose for access (Privacy Commission, Ex. 101, p. 313 (Recommendation No. 11); AMA, Ex. 167(9–12), pp. 2–3; NCCHR, Ex. 2(151), pp. 4–6).

Subparagraph (d)(2) lastly states that the approval process will consider who will substantively review requested records and what their professional qualifications are. The agency's policy is that the personnel authorized to review and analyze the personally identifiable medical information will be "limited to those who have a need for access and have appropriate professional qualifications." As provided by subparagraph (d)(3), the written access

order must list those persons who are expected, at the time the order is written, to review substantively the requested medical information. Other persons, however, may be authorized to review the records at a later time if the need exists (*See infra*). The draft guidelines limited access to physicians or persons under the direct supervision of a physician and trained to evaluate information in medical records (Ex. 167(2), pp. 4, 5). Several participants endorsed these or similar limitations (Ass. Gen. Contractors of Iowa, Ex. 2(3); Cyanamid Co., Ex. 2(102); Dr. Whorton, Ex. 11, p. 18; Samuels (AFL–CIO IUD), Tr. 965–67; Biscuit & Cracker Mfgr. Assn., Ex. 167(9–17), p. 2; Borg-Warner Corp., Ex. 167(9–22), p. 2). Having carefully considered the matter, the agency relaxed the language in the final regulations to permit a case-by-case evaluation of the qualifications of authorized reviewers. Without question, access should be limited on a need-to-know basis, and the regulations so provide (*See,* Weiner, Ex. 9A, pp. 45–6). But, the agency does not believe that every conceivable situation of OSHA access requires the direct personal supervision of a physician. Limited medical information like some biological monitoring tests can be easily reviewed and evaluated by a wide range of trained professionals such as epidemiologists, toxicologists, and industrial hygienists (Dr. Wegman, Tr. 245–48). It is to be anticipated that agency review of medical information will often be performed in consultation with agency staff or contract physicians; however, direct personal supervision by the physician will often be unncessary. As a result, the final regulations permit a case-by-case determination of the qualifications of authorized reviewers.

Paragraph (d)(3) specifies the content of a written access order. The written access order will be presented to the employer and any collective bargaining agent when access is sought, and made available to employees by posting. The written access order is the prime vehicle for informing the employer and employees of the agency's actions and decisionmaking. As a result, the regulations require that the written access order state with reasonable particularly what is being requested and why (*See,* AMA, Ex. 167(9–12), p. 3); whether examination of this information will be conducted on-site and what will be removed off-site; who is authorized to review and analyze the information obtained; who is the OSHA Medical Records Officer; and how long will personally identifiable information likely be retained by the agency. These matters need only be addressed with reasonable particularity, since absolute precision will often be impossible.

Paragraph (d)(4) establishes two special situations where a written access order need not be obtained for OSHA personnel to gain access to personally identifiable medical information. The first situation where a written access order is unnecessary concerns cases where the specific written consent of an employee is given for OSHA access to his or her medical record. This will occur in such situations as Section 11(c) investigations where the complainant's medical records must be reviewed, or where employees in the couse of a complaint inspection desire to have an OSHA official review their medical records. Section 1910.20(e)(2)(ii) of 29 CFR provides the mechanism whereby an employee can release medical records to a designated representative through a specific written consent authorization. If the agency or an OSHA official is listed as a designated representative, then a written access order need not be obtained. Where personally identifiable medical information is received and taken off-site, however, a person must be promptly named to serve as a Principal OSHA Investigator to assure protection of the information, and the MRO notified of this person's identity. Thereafter, the personally identifiable medical information is subject to the use and security requirements of the remainder of the procedural regulations.

The second situation where a written access order need not be obtained concerns physician consultations. As OSHA has acquired staff and contract physicians, situations have arisen where an agency physician was sent to review and discuss a potential problem with an employer's plant physician or corporate medical director. This may be done at the request of the employer. These informal contacts will likely expand in the future. As part of such a professional interaction, employee medical records may be reviewed and discussed with a view towards determining whether a problem actually exists, and if so, what should be done about it. These informal physician contacts can avoid unnecessary full-fledged investigations and focus employer energies on early corrective action where problems are discovered. Until medical information is reviewed and discussed, neither OSHA nor the employer may be aware of the nature or extent of an occupational health problem. OSHA believes that these physician-to-physician contacts should be encouraged, and thus has exempted them from the requirement for a written access order. The final regulations provide that "No employee medical records, however, shall be taken off-site in the absence of a written access order, and no notes of personally identifiable employee medical information made by the OSHA physician shall leave his or her control without the permission of the OSHA Medical Records Officer."

E. Paragraph (e)—*Presentation of written access order and notice to employees*

Paragraph (e) governs the mechanics of presenting a written access order to the employer and notifying employees of its existence. In practice, the written access order may constitute, or may be accompanied by, an administrative subpoena. As suggested, the final regulations provide that a copy of the written access order shall be provided to the employer (SOCMA, Ex. 167(9–36), p. 9; DuPont, Ex. 150, p. 18). An accompanying cover letter must also be provided which summarizes the requirements of this section and indicates that questions or objections concerning the written access order may be directed to the Principal OSHA Investigator or to the OSHA Medical Records Officer. Two copies of these documents must be provided so that one copy of each may be prominently posted as required by 29 CFR 1910.20(e)(3)(ii). The copy to be posted shall not identify specific employees by direct personal identifier (name, etc.). Posting at the workplace will serve to notify employees of what OSHA is doing with their medical records and why, and will let them know that they can lodge objections if they so desire. In addition, the regulations provide that a copy of these two documents shall be promptly provided "to each collective bargaining agent representing employees whose medical records are subject to the written access order." Union officials can be expected to communicate the nature of OSHA's actions to their members, and lodge objections or inquiries if any arise.

The draft guidelines provided for individual notice to employees by certified mail on each occasion that access was sought (Ex. 167(2), pp. 5–6). The final regulations delete this requirement due to the agency's judgment that individual notice would often be unnecessary and overly burdensome. As pointed out by several participants, the administrative and technical costs involved in individual notice are similar to those involved in seeking employee consent (HRG, Ex. 167(9–40), p. 4; NIOSH, Ex. 167(9–37), p. 2). Also, in most cases, posting and

notice to both the employer and union representatives will be fully adequate to inform all employees of OSHA's actions. One significant purpose for notifying employees is to assure that governmental actions are conducted openly to enable interested employees to scrutinize OSHA's actions and complain if they feel the agency is acting improperly. Individual notice to each and every employee will often not be necessary to accomplish this objective. The regulations do, however, contemplate that individual notice may be appropriate in some circumstances. To address this possibility, the regulations provide:

> The Principal OSHA Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal OSHA Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

Employers have ready means available to distribute the written access order, such as with the next employee paycheck or at the beginning or end of a work shift. The regulations opt to use these vehicles to notify employees individually where there is mutual agreement of a need to do so.

F. Paragraph (f)—*Objections concerning a written access order*

Although OSHA does not believe that agency access to employee medical information should depend upon employee consent, OSHA recognizes that it is important that employee objections concerning OSHA access be carefully considered. Paragraph (f) provides that all written employee, collective bargaining agent, and employer objections shall be transmitted to the OSHA Medical Records Officer. Paragraph (l) provides that these objections be discussed in the MRO's annual report. The making of an objection by an employee, collective bargaining agent, or employer does not operate to postpone operation of the written access order. Unless the agency decides otherwise, access to the records shall proceed without delay notwithstanding the objection. Paragraph (f) mandates, however, that the MRO respond in writing to each employee's and collective bargaining agent's written objection concerning OSHA access. Because of an employer's different legal status and relationship to the medical information, a written response to an employer objection is discretionary. A formal written response to the objection will enable a complete reconsideration of the written access order. OSHA recognizes that there may be situations where the agency made a mistake or proceeded on the basis of incomplete information such that the written access order should be revoked. The MRO is the appropriate person to make this decision. The final regulations therefore provide:

> Where appropriate, the OSHA Medical Records Officer may revoke a written access order and direct that any medical information obtained by it be returned or destroyed. The Principal OSHA Investigator shall assure that the instructions of the OSHA Medical Records Officer are promptly implemented.

The draft guidelines also include (1) a waiting period after an access order was presented before OSHA would seek to examine requested records, (2) an automatic reconsideration procedure if an employer or employee objected to OSHA access, and (3) a commitment to treat employer refusals of access as a denial of the right of entry under *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978) (Ex. 167(2), p. 6). With the exception of the required review by the OSHA Medical Records Officer of written objections by employees and collective bargaining agents, the final regulations do not mandate that these steps be followed in each case. The presumption of the regulations is that the agency will proceed without delay notwithstanding an objection, although OSHA retains the discretion not to proceed immediately. In the absence of a significant initial union, employee or employer objection, there would be little justification for a substantial waiting period. On the other hand, significant initial objections could cause OSHA to redefine, reaffirm, or withdraw its request for access before records are examined. The possible situations are so numerous and varied that OSHA does not believe it is advisable to limit in advance what the agency responses could be, or to create an explicit or implied obligation on the agency's part to automatically delay execution of a written access order. In light of *Marshall v. Barlow's, Inc., supra*, OSHA also recognizes that its right of access to records may often not be directly enforceable absent a warrant or administrative supoena. This is a rapidly evolving area of the law; thus it is not possible to state in advance precisely what legal recourse OSHA will seek if faced with a refusal to permit access.

G. Paragraph (g)—*Removal of direct personal identifiers*

Subparagraph (h)(5) of the regulations, *infra*, will serve to prevent the agency from unnecessarily obtaining and taking off-site medical information having direct personal identifiers. Where it is necessary to take direct personal identifiers off-site, there will likely be situations where the direct personal identifiers are not continuously needed to permit use of the medical information. For example, direct identifiers may only be needed to permit follow-up at the conclusion of evaluation of medical information. The draft guidelines gave no special protection to direct personal identifiers, but several participants recommended a system of stripping direct personal identifiers, coding the medical information and the direct personal identifiers with a unique code, and maintaining the list of coded personal identifiers apart from the coded medical information (AMRA, Ex. 82, pp. 4, 7, Tr. 2466–67; NCCHR, Ex. 2(151), p. 4, Tr. 1864, 1875–78; Dr. Givens (Cal. Med. Assn.), Tr. 1713–18; Sterling Drug Co., Ex. 167(9–18), p. 2). OSHA believes this to be a sound mechanism to maximize the protection of employee privacy and to minimize possible misuse of personally identifiable medical information. Paragraph (g) of the final regulations incorporates this approach.

Except as authorized by the MRO, direct personal identifiers (name, address, social security number, payroll number, etc.) must be promptly separated from medical information whenever direct identifiers are obtained and taken off-site pursuant to a written access order. The Principal OSHA Investigator is directed to code the medical information and the list of direct personal identifiers with a unique identifying number for each employee, and then hand deliver or mail the list of coded-identifiers to the MRO. The MRO thereafter controls use and distribution of the list of coded identifiers to those with a need to know its contents. In addition, the numerically coded medical information is to be used and kept secured as though still in a directly identifiable form.

H. Paragraph (h)—*Internal agency use of personally identifiable employee medical information*

Paragraph (h) establishes who can have access to personally identifiable employee medical information once it is brought into the agency. Numerous participants favored limiting internal access to the smallest number of individuals possible (*See*, UAW, Ex. 165, p. 2; SOCMA, Ex. 167(9–36), p. 10; ORC,

Ex. 159, p. 2; Dow Chemical Co., Ex. 167(9–41), p. 4; Continental Oil Co., Ex. 167(9–10), p. 2; USWA, Ex. 160, pp. 18–19), although there was recognition that such personnel as supervised abstracters and clericals may have a need for access (NIOSH, Ex. 167(9–37), pp. 1–2; Weiner, Ex. 9A, p. 45; Dr. Whorton, Ex. 11, p. 19, Tr. 305; USWA, Ex. 160, pp. 18–19). The final regulations limit access to those with a need to know and appropriate qualifications, and fix responsibility on key officials to regulate all internal access.

Subparagraph (h)(1) provides that "The Principal OSHA Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section." Clear accountability is thus primarily fixed on one person in each instance of access for assuring that, in practice, medical information is properly used and kept secured (*See*, Ex. 167(2), p. 4).

Subparagraph (h)(2) regulates who has the authority to permit the examination and use of personally identifiable employee medical information. The Principal OSHA Investigator, the OSHA Medical Records Officer, the Assistant Secretary, and any other authorized person listed on a written access order are the only individuals who can permit the examination of the information. They are responsible for assuring that, in addition to those listed on the written access order, no one is permitted to examine or use this information other than agency employees and contractors who have a need for access and appropriate qualifications for the purpose for which they are using the information. No OSHA employee or contractor is authorized to examine or otherwise use this information unless so permitted. This need-to-know criterion is necessarily flexible so that supervised clerical and other similar uses are not categorically forbidden, but at the same time the criteria is meant to preclude unauthorized and unsupervised access. The draft guidelines contained a similar need-to-know requirement (Ex. 167(2), p. 7).

As was the case with the draft guidelines (Ex 167(2), p. 4), the final regulations permit access by attorneys in the Office of the Solicitor of Labor and by independent agency contractors on a need-to-know basis. In most instances, the only contractors having a need for access to personally identifiable medical information would be contract physicians, who already would be under legal and ethical obligations to protect confidential medical information. Where other contractors are permitted to use this information, they must contractually agree to abide by the requirements of this section and any implementing agency directives and instructions (*See*, Dr. Wegman, Tr. 236–37; Bridbord (NIOSH), Ex. 22, p. 6; NIOSH, Ex. 107D).

Subparagraph (h)(4) provides that "OSHA employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of paragraphs (d)–(g) of this section are repeated with respect to the secondary purpose." This provision serves to preclude secondary agency uses of personally identifiable employee medical information (*See*, NCCHR, Ex. 58, p. 46; Ex. 167(2), p. 7), unless a new written access order is obtained, or employees consent to a new use.

Finally, subparagraph (h)(5) provides that "Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of personally identifiable medical information to be taken off-site." No similar requirement was in the draft guidelines, but the agency felt it was beneficial to add this provision. Unlike the case with NIOSH or other research agencies, OSHA anticipates that it will not normally be necessary for OSHA to microfilm or otherwise copy entire medical records and then later abstract relevant information. The requirement that a minimum of personally identifiable medical information be taken off-site also recognizes that OSHA access to identifiable records may sometimes be for the sole purpose of stripping identifiers so that all medical information obtained is not in a directly identifiable form. Where this can reasonably be performed on-site, OSHA will do so.

I. Paragraph (i)—*Security procedures*

Paragraph (i) of the final regulations establishes security procedures to govern internal agency use of personally identifiable employee medical information. As was the case with the draft guidelines (Ex. 167(2), p. 7), the final regulations provide for segregation of agency files containing this information, and require that these agency files be kept secured in a locked cabinet or vault when not in active use (*See*, Dow Chemical Co., Ex. 167(9–14), p. 6). The OSHA Medical Records Officer and the Principal OSHA Investigator are each required to maintain a log of uses and transfers of this medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision (*See*, Ex. 167(2), p. 7; Dow Chemical Co., Ex. 167(9–41), p. 6; NIOSH, Ex. 167(9–37), p. 3). As was the case with the draft guidelines (Ex. 167(2), p. 8), the final regulations permit photocopying of covered records, but all forms of duplication "shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained." The final regulations also recognize that agency personnel may create worksheets or other similar documents which contain personally identifiable employee medical information. In light of this, subparagraph (i)(4) provides that all protective measures established by this section apply to these worksheets, as well as duplicate copies or other agency documents containing personally identifiable employee medical information.

Finally, subparagraph (i)(5), as was the case in the draft guidelines, stipulates that intra-agency transfers of personally identifiable employee medical information must be by hand delivery, United States mail, or equally protective means, and not by inter-office mailing channels (Ex. 167(2), p. 7).

The final regulations omit provisions concerning computerized records or supplemental security procedures (Ex. 167(2), p. 8) since (1) OSHA does not currently contemplate situations where OSHA would computerize personally identifiable medical information, and (2) supplemental security procedures do not depend on any authorizing language in these regulations. Additional directives on the security of personally identifiable employee medical information will be issued as needed.

J. Paragraph (j)—*Retention and destruction of records*

The draft guidelines provided for early destruction of personally identifiable information when the original purposes for access had been accomplished (Ex. 167(2), p. 8). Several participants urged that this information not be retained any longer than necessary (Mobay Chemical Corp., Ex. 2(97), p. 5; HRG, Ex. 2(161), p. 4; Stulberg (HRG), Tr. 2041; DuPont, Ex. 150, pp. 19–20; Dow Chemical Co., Ex. 167(9–41), p. 6). OSHA agrees that personally identifiable information (including lists of coded direct personal identifiers) should be destroyed or returned to the original recordholder when no longer needed for the purposes for which it was obtained. The final regulations so

provide in subparagraph (k)(1), subject to applicable agency records disposition programs. OSHA, as are other Federal agencies, is subject to several statutes and implementing regulations governing the disposal of records received in connection with the transaction of public business (*See*, 44 U.S.C. 2901–3324; 41 CFR 101–11.4). The agency has a formal records disposition program which may need to be modified to facilitate early destruction of personally identifiable medical information, and the agency intends to pursue this during the implementation of the procedural regulations.

OSHA can contemplate situations where personally identifiable medical information, after its initial utility, need not be used again until some time in the future. For example, medical information upon which a citation is based may be used during the hearing stage of an enforcement case. The medical information may not be utilized while the case is on appeal, but there may be a need for the information if the case is remanded for further proceedings. Similarly, an investigation of an apparently new health hazard may produce uncertain results. Before completely closing out this investigation, it may be appropriate to await the outcome of an ongoing research study or parallel investigation elsewhere in the country. In these cases, the regulations provide that the medical information is to be transferred to the OSHA Medical Records Officer. And, as suggested by one participant (Nat. Steel Corp., Ex. 165, p. 3), the MRO is directed to "conduct an annual review of all centrally-held information for the purpose of determining which information is no longer needed for the purposes for which it was obtained."

K. Paragraph (k)—*Results of an agency analysis using personally identifiable employee medical information*

The draft guidelines were silent on the issue of individual notification to employees of the results of OSHA analyses using personally identifiable employee medical information. Several participants urged that individual notice to each employee should be incorporated in the procedural regulations (DuPont Co., Ex. 150, p. 22; Dr. Whorton, Ex. 11, pp. 18–19; NIOSH, Ex. 167 (9–37), p. 2). In many cases, employees will learn the results of an OSHA investigation through a closing conference or informal post-inspection conference with union representatives, through the posting of a citation, or by calling the relevant OSHA Area Office. In other kinds of investigations similar to a NIOSH Health Hazard Evaluation or Field Study where disease is diagnosed in specific employees, individual notification might be essential (*See*, 41 CFR 85.11, 85a.8; Ex. 20, 21). OSHA believes that it is best to permit a case-by-case consideration of the need for individual notification. Accordingly, the final regulations provide that "The OSHA Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as part of the analysis."

L. Paragraph (l)—*Annual report*

The draft guidelines provided for a semi-annual report by the OSHA Medical Records Officer to the Assistant Secretary concerning OSHA's medical records access experience (Ex. 167 (2), p. 3). The final regulations continue this requirement in paragraph (l), but changes it to an annual report. The report must be made available to the public, and must discuss the number of written access orders and their purposes, the nature and disposition of employee, collective bargaining agent, and employer written objections, and the nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information. This annual report will serve to focus the attention of the Assistant Secretary and interested members of the public on OSHA's use of personally identifiable employee medical information.

M. Paragraph (m)—*Inter-agency transfer and public disclosure*

The draft guidelines contained limitations on inter-agency sharing and public disclosure of employee medical records (Ex. 167 (2), pp. 8–11). Several participants argued that personally identifiable employee medical information should practically never be shared or disclosed without employee consent, even for public health purposes (HRG, Ex. 2 (161), p. 4, Tr. 2041, Ex. 167 (9–40), pp. 3–4; NCCHR, Ex. 2 (151), p. 8; Continental Oil Co. Ex. 167 (9–10), p. 2; Caterpillar Tractor Co., Ex. 167 (9–21), p. 3; SOHIO, Ex. 167 (9–29), p. 2). Other participants could accept strictly controlled inter-agency sharing for public health purposes (Weiner, Ex. 9A, p. 45; USWA, Ex. 160, p. 18; AMA, Ex. 167 (9–12), pp. 4–5). All participants, however, were concerned that personally identifiable medical information not be shared or disclosed in a manner which could adversely affect subject employees (Becker (USWA), Tr. 2390; Belair (NCCHR), Tr. 1862–63, NCCHR, Ex. 2 (151), pp. 2, 8).

OSHA agrees that inter-agency transfer and public disclosure of medical information should be carefully controlled, and paragraph (m) governs these issues. Inter-agency transfer and public disclosure are not categorically forbidden by the final regulations, however, because (1) the agency may not legally make such a commitment, and (2) situations may arise where transfer or disclosure is appropriate. Situations could conceivably arise where OSHA as a matter of law was compelled to transfer information to another agency or disclose it to a non-governmental individual. An example might be a General Accounting Office investigation, or where there is a compelling public interest in disclosure of medical information to which no significant privacy expectation attaches (e.g., cause of death). The final regulations establish strict criteria as to when inter-agency transfer or public disclosure of personally identifiable employee medical information may occur. Except when required by law, all inter-agency transfer or public disclosure of this information must be approved by the Assistant Secretary in accordance with these criteria. OSHA employees may, however, transfer or disclose aggregate employee medical information or medical information on individual employees which is not in a personally identifiable form.

Subparagraph (m)(2) governs the approval of an inter-agency transfer of personally identifiable employee medical information which has not been consented to by affected employees. First, transfer will only be permitted to a public health agency (such as EPA, CPSC, FDA, etc.) for a substantial public health purpose. Second, the recipient agency must have a demonstrable need for the medical information in a personally identifiable form. Third, the recipient agency may not use the requested information to make individual determinations concerning affected employees which could be to their detriment. Fourth, the recipient agency must have regulations or established written procedures which provide protection to privacy interests substantially equivalent to that of OSHA's procedures. And fifth, the requested transfer must satisfy an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information.

These five limitations on inter-agency transfer follow several of the suggestions of rulemaking participants. Since OSHA collects medical

information only for a public health purpose, it is appropriate to restrict all subsequent discretionary agency transfers to those with an equally clear public health purpose. The recipient agency's privacy protections must be as protective as OSHA's, but are not required to be identical since agencies vary significantly in their management structures and modes of operation. Unlike the draft guidelines, the final regulations attach no special status to an agency memorandum of understandings (USWA, Ex. 160, pp. 18–19; SOCMA, Ex. 167(9–36), p. 2; HRG, Ex. 167(9–40), pp. 4–5). This form of formal agreement may in specific cases satisfy several of the five criteria for approval of inter-agency sharing, but OSHA believes it to be important to consider each request for inter-agency transfer individually rather than as part of some comprehensive agreement.

The fifth and last limitation on inter-agency transfer concerns the Privacy Act, which would protect personally identifiable medical information which is part of a "system of records" as defined in paragraph (a)(5) of that Act (5 U.S.C. 552a(a)(5); 29 CFR 70a.2). The Privacy Act prohibits inter-agency transfers of covered records unless one of several exemptions is met (5 U.S.C. 552a(b), 29 CFR 70a.3). The two exemptions which could most likely pertain to employee medical information held by OSHA would be exemption (7) governing civil and criminal law enforcement, and exemption (8) governing compelling circumstances affecting the health or safety of an individual (5 U.S.C. 552a(b)(7), (8); 29 CFR 70a.3(e)(vii), (xi)). Thus, unless one of these two narrow exemptions is met, the Privacy Act where applicable serves to further prevent the discretionary inter-agency transfer of personnally identifiable employee medical information. To the extent that the Privacy Act does not apply to a particular record covered by these regulations, the Assistant Secretary could share that information with another Federal agency without regard to the Privacy Act exceptions. The four preceding limitations would apply to the transfer, however.

Subparagraph (m)(3) contains two exceptions to the requirements of subparagraph (m)(2). First, upon the approval of the Assistant Secretary, personally identifiable employee medical information may be shared with NIOSH. NIOSH is a sister public health agency to OSHA and its research activities complement OSHA's regulatory responsibilities. The two agencies are increasingly attempting to coordinate their activities and maintain close prefessional staff contacts. OSHA's ability to analyze employee medical information will often be improved by gaining NIOSH's assistance, and medical information collected by OSHA for one purpose may have major research value to NIOSH. Subparagraph (m)(3) is meant to permit sharing medical information with NIOSH in these circumstances. In the judgment of OSHA, NIOSH has, due to its frequent use of medical records, developed and demonstrated appropriate sensitivity to the privacy interests involved with employee medical records. As a result, identifiable medical information may be transferred to NIOSH upon the approval of the Assistant Secretary, without further inquiry into the sufficiency of their programs for protecting medical records.

Subparagraph (m)(3) also permits, upon the approval of the Assistant Secretary, the inter-agency transfer of personally identifiable employee medical information to the Department of Justice when necessary with respect to a specific action under the Occupational Safety and Health Act. For example, the Justice Department prosecutes criminal violations of the Act (*See*, s17(e)–(h), 29 U.S.C. 666) as well as civil penalty collection actions (*See*, Section 17(1), 29 U.S.C. 666(k)). The Justice Department also represents OSHA in Freedom of Information Act (FOIA) suits. Personally identifiable employee medical information may, on occasion, be relevant to these proceedings, and OSHA must necessarily share this information in these circumstances. While medical information obtained in the course of litigation is already exempt from these regulations, this additional language makes it clear that medical information collected for other purposes, but which becomes necessary for litigation in which the Department of Justice is involved, may be transferred to the Department.

Subparagraphs (m)(4) and (5) govern public disclosure of personally identifiable employee medical information which has not been consented to by affected employees. Exemption (6) of the Freedom of Information Act (FOIA) authorizes OSHA to withhold personally identifiable information where its disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(b)((6)). The Department of Labor's implementing regulations broadly construes this exemption and treats medical records as presumptively non-disclosable (29 CFR 70.26). It is OSHA's judgment that where identifiable medical records are concerned, disclosure will necessarily impede OSHA's functions. OSHA's access to necessary medical information depends on protecting personal privacy, and OSHA's overall success as a public agency depends on employee and public confidence in the agency's discharge of its functions in a manner sensitive to individual rights. These considerations dictate that identifiable medical information not be disclosed absent compelling circumstances, even though the Department of Labor's FOIA regulations otherwise encourage the release of exempt information where disclosure will not impede the discharge of agency functions (29 CFR 70.11(b)).

Accordingly, subparagraph (m)(4) provides that "The Assistant Secretary shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual." The "compelling circumstances" exception is meant to be extremely limited in nature, and parallels exemption (8) of the Privacy Act (5 U.S.C. 552a(b)(8); 29 CFR 70a.3(e)(xi)). In addition, subparagraph (m)(5) concerns employee medical information which contains information which could reasonably be used indirectly to identify specific employees, and provides that this shall not be disclosed to the public if to do so would constitute a clearly unwarranted invasion of personal privacy. Together, these subparagraphs express OSHA's intent to deny requests for public disclosure of personally identifiable employee medical information, unless there are compelling countervailing circumstances relating to health and safety.

Subparagraph (m)(6) governs the issue of notice when OSHA intends to transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. The draft guidelines provided for written notice to the employer and to affected employees (Ex. 167(2), pp. 9, 10). Several participants stressed the importance of notice (Sterling Drug Co., Ex. 167(9–18), p. 1; Phillips Petroleum Co., Ex. 167(9–23), p. 2; Shell Oil Co., Ex. 167(9–28), p. 4; SOHIO, Ex. 167(9–29), p. 2; MCA, Ex. 167(9–38); p. 31; Dow Chemical Co., Ex. 167(9–41), p. 7. The final regulations delete the rigid time requirements of the draft guidelines, but provide that the OSHA Medical Records Officer shall assure that advance notice is provided

to any collective bargaining agent representing affected employees and to the employer, except with respect to transfers to NIOSH or to the Department of Justice. Where the intended inter-agency transfer or public disclosure contains direct personal identifiers, the OSHA Medical Records Officer must also, when feasible, take reasonable steps to assure that affected employees are notified. In the case of release of information pursuant to exemption (8) of the Privacy Act, the Act itself requires notification of individuals upon the disclosure.

As a final matter, several participants urged that the final regulations explicitly discuss penalties to be assessed against OSHA employees who violate these regulations (AMRA, Ex. 82, pp. 4–5; API, Ex. 158, p. 42; Ohio Bldg. Chpt., Ex. 167(9–3), p. 1; SOCMA, Ex. 167(9–36), p. 5; HRG, Ex. 167(9–40), p. 5; Dow Chemical Co., Ex. 167(9–41), p. 4.) The draft guidelines contained no provisions on this topic, and having considered the matter, the agency declined to explicitly address this topic in the final regulations.

OSHA agrees that agency employees must be made aware of these regulations, and that public confidence in OSHA will depend on strict enforcement of these regulations. It is not necessary, however, that penalty procedures be discussed in the regulations. All Department of Labor employees are given an "Employee Handbook" (Ex. 191). Chapter 23 of this handbook, "Standards of Conduct," briefly discusses the Department's longstanding regulations governing employee conduct (Ex. 191, P. 55). These ethics and conduct regulations are given to new employees, and each current employee is reminded of them on an annual basis (29 CFR 0.735–2(b); Ex. 191, p. 81). These regulations provide:

> Failure of an employee to comply with any of the standards of conduct set forth in this part shall be a basis for such disciplinary or other remedial action as may be appropriate to the particular case. (29 CFR 0.735–3(a); Ex. 191, p. 81)
>
> Employees may not, except with specific permission * * * directly or indirectly use or allow the use of official information for private purposes or to further a private interest when such information is not available to the general public; nor may employees disclose official information in violation of any applicable law, Executive order, or regulation. (29 CFR 0.735–8; Ex. 191, p. 83)
>
> The effectiveness of the Department of Labor in serving the public interest depends upon the extent to which the Department and its employees hold the public confidence. Employees are therefore required not only to observe the requirements of Federal laws, policies, orders, and regulations governing official conduct, they must also avoid any apparent conflict with these requirements. (29 CFR 0.735–4(a); Ex. 191, pp. 81–82)

These existing provisions, in conjunction with Office of Personnel Management and Department of Labor procedures for disciplinary actions, are adequate to deal with misuse of employee medical records by OSHA employees. Other forms of punishment, such as criminal penalties beyond the existing criminal provisions of the Privacy Act, are matters for Congress to address (*See*, HRG, Ex. 2(161), pp. 4–5).

IV. Authority, Signature, and the Regulations

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

The **Federal Register** has been requested to officially file this document at 1 p.m. E.D.T. on May 21, 1980, which shall be the time of issuance of this document as provided by 29 CFR 1911.18. The time of issuance is the earliest moment that petitions for judicial review may be filed.

Accordingly, pursuant to sections 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1599, 1600; 29 US.C. 657), Section (e) of the Privacy Act (5 U.S.C. 552a(e)), and the government's general housekeeping statute (5 U.S.C. 301), Chapter XVII of Title 29, the Code of Federal Regulations, is hereby amended by adding a new Part 1913.

Signed at Washington, D.C., this 14th day of May, 1980.

Eula Bingham,

Assistant Secretary of Labor.

A new Part 1913 is added to Title 29 of the Code of Federal Regulations (CFR), consisting of §1913.10, reading as follows:

PART 1913—RULES OF AGENCY PRACTICE AND PROCEDURE CONCERNING OSHA ACCESS TO EMPLOYEE MEDICAL RECORDS

Sec.

1913.10 Rules of agency practice and procedure concerning OSHA access to employee medical records.

Authority: Secs. 8(c) and 8(g) (84 Stat. 1599, 1600; 29 U.S.C. 657), section (e) of the Privacy Act (88 Stat. 1899, 1900; 5 U.S.C. 552a(e)), and 5 U.S.C. 301 (80 Stat. 379).

§ 1913.10 Rules of agency practice and procedure concerning OSHA access to employee medical records.

(a) *General policy.* OSHA access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, OSHA authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, OSHA examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by OSHA only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

(b) *Scope and application.* (1) Except as provided in paragraphs (b)(3)–(b)(6) below, this section applies to all requests by OSHA personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provisions of 29 CFR 1910.20(e).

(2) For the purposes of this section, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

(3) This section does not apply to OSHA access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form. This section does not apply to records required by 29 CFR Part 1904, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 CFR 1910.20(c)(5) or by specific occupational safety and health standards as exposure records.

(4) This section does not apply where OSHA compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 CFR 1910.20. An

examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the recordholder. The OSHA compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

(5) This section does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

(6) This section does not apply where a written directive by the Assistant Secretary authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

(7) Even if not covered by the terms of this section, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public (*See*, 29 CFR 70.26 & 70a.3).

(c) *Responsible persons.* (1) *Assistant Secretary.* The Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) shall be responsible for the overall administration and implementation of the procedures contained in this section, including making final OSHA determinations concerning:

(i) Access to personally identifiable employee medical information (paragraph (d)), and

(ii) Inter-agency transfer or public disclosure of personally identifiable employee medical information (paragraph (m)).

(2) *OSHA Medical Records Officer.* The Assistant Secretary shall designate an OSHA official with experience or training in the evaluation, use, and privacy protection of medical records to be the OSHA Medical Records Officer. The OSHA Medical Records Officer shall report directly to the Assistant Secretary on matters concerning this section and shall be responsible for:

(i) Making recommendations to the Assistant Secretary as to the approval or denial of written access orders (paragraph (d)),

(ii) Assuring that written access orders meet the requirements of paragraphs (d)(2) and (d)(3) of this section,

(iii) Responding to employee, collective bargaining agent, and employer objections concerning written access orders (paragraph (f)),

(iv) Regulating the use of direct personal identifiers (paragraph (g)),

(v) Regulating internal agency use and security of personally identifiable employee medical information (paragraphs (h)–(j)),

(vi) Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees (paragraph (k)),

(vii) Preparing an annual report of OSHA's experience under this section (paragraph (l)), and

(viii) Assuring that advance notice is given of intended inter-agency transfers or public disclosures (paragraph (m)).

(3) *Principal OSHA Investigator.* The Principal OSHA Investigator shall be the OSHA employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section (paragraphs (d)-(m). When access is pursuant to a written access order, the Principal OSHA Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

(d) *Written access orders.* (1) *Requirement for written access order.* Except as provided in paragraph (d)(4) below, each request by an OSHA representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder shall be made pursuant to a written access order which has been approved by the Assistant Secretary upon the recommendation of the OSHA Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by, an administrative subpoena.

(2) *Approval criteria for written access order.* Before approving a written access order, the Assistant Secretary and the OSHA Medical Records Officer shall determine that:

(i) The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information,

(ii) The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

(iii) The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

(3) *Content of written access order.* Each written access order shall state with reasonable particularity:

(i) The statutory purposes for which access is sought,

(ii) A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information,

(iii) Whether medical information will be examined on-site, and what type of information will be copied and removed off-site,

(iv) The name, address, and phone number of the Principal OSHA Investigator and the names of any other authorized persons who are expected to review and analyze the medical information,

(v) The name, address, and phone number of the OSHA Medical Records Officer, and

(vi) The anticipated period of time during which OSHA expects to retain the employee medical information in a personally identifiable form.

(4) *Special situations.* Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

(i) *Specific written consent.* If the specific written consent of an employee is obtained pursuant to 29 CFR 1910.20(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal OSHA Investigator shall be promptly named to assure protection of the information, and the OSHA Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs (h)–(m) of this section.

(ii) *Physician consultations.* A written access order need not be obtained where an OSHA staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the OSHA physician may conduct on-site evaluation of employee medical records in consultation with the

employer's physician, and may make necessary personal notes of his or her findings. No employee medical records, however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the OSHA physician shall leave his or her control without the permission of the OSHA Medical Records Officer.

(e) *Presentation of written access order and notice to employees.* (1) The Principal OSHA Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal OSHA Investigator or to the OSHA Medical Records Officer.

(2) The Principal OSHA Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

(3) The Principal OSHA Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter (*See,* 29 CFR 1910.20(e)(3)(ii)).

(4) The Principal OSHA Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal OSHA Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

(f) *Objections concerning a written access order.* All employee, collective bargaining agent, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the OSHA Medical Records Officer. Unless the agency decides otherwise, access to the records shall proceed without delay notwithstanding the lodging of an objection. The OSHA Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to OSHA access. Where appropriate, the OSHA Medical Records Officer may revoke a written access order and direct that any medical information obtained by it be returned to the original recordholder or destroyed. The Principal OSHA Investigator shall assure that such instructions by the OSHA Medical Records Officer are promptly implemented.

(g) *Removal of direct personal identifiers.* Whenever employee medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal OSHA Investigator shall, unless otherwise authorized by the OSHA Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal OSHA Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the OSHA Medical Records Officer. The OSHA Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

(h) *Internal agency use of personally identifiable employee medical information.* (1) The Principal OSHA Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

(2) The Principal OSHA Investigator, the OSHA Medical Records Officer, the Assistant Secretary, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No OSHA employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

(3) Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Office of the Solicitor of Labor, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

(4) OSHA employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of paragraphs (d)–(g) of this section are repeated with respect to the secondary purpose.

(5) Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

(i) *Security procedures.* (1) Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

(2) The OSHA Medical Records Officer and the Principal OSHA Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

(3) The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

(4) The protective measures established by this section apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

(5) Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

(j) *Retention and destruction of records.* (1) Consistent with OSHA records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed

or returned to the original recordholder when no longer needed for the purposes for which they were obtained.

(2) Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the OSHA Medical Records Officer. The OSHA Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

(k) *Results of an agency analysis using personally identifiable employee medical information.* The OSHA Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

(l) *Annual report.* The OSHA Medical Records Officer shall on an annual basis review OSHA's experience under this section during the previous year, and prepare a report to the Assistant Secretary which shall be made available to the public. This report shall discuss:

(1) the number of written access orders approved and a summary of the purposes for access,

(2) the nature and disposition of employee, collective bargaining agent, and employer written objections concerning OSHA access to personally identifiable employee medical information, and

(3) the nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

(m) *Inter-agency transfer and public disclosure.* (1) Personally identifiable employee medical information shall not be transferred to another agency or office outside of OSHA (other than to the Office of the Solicitor of Labor) or disclosed to the public (other than to the affected employee or the original recordholder) except when required by law or when approved by the Assistant Secretary.

(2) Except as provided in paragraph (m)(3) below, the Assistant Secretary shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

(i) needs the requested information in a personally identifiable form for a substantial public health purpose,

(ii) will not use the requested information to make individual determinations concerning affected employees which could be to their detriment,

(iii) has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section, and

(iv) satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (*See,* 5 U.S.C. 552a(b); 29 CFR 70a.3).

(3) Upon the approval of the Assistant Secretary, personally identifiable employee medical information may be transferred to:

(i) the National Institute for Occupational Safety and Health (NIOSH) and

(ii) the Department of Justice when necessary with respect to a specific action under the Occupational Safety and Health Act.

(4) The Assistant Secretary shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

(5) The Assistant Secretary shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy (*See,* 5 U.S.C. 552(b)(6); 29 CFR 70.26).

(6) Except as to inter-agency transfers to NIOSH or the Department of Justice, the OSHA Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that OSHA intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the OSHA Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be transferred or disclosed contains direct personal identifiers.

(n) *Effective date.* This section shall become effective on August 21, 1980.

[FR Doc. 80-15390 Filed 5-21-80; 1:00 pm]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1928

[Docket H-112B]

Access to Employee Exposure and Medical Records in Agricultural Employments

AGENCY: The Occupational Safety and Health Administration of the United States Department of Labor (OSHA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal extends the provisions of 29 CFR 1910.20, "Access to Employee Exposure and Medical Records" (published elsewhere in this part of the **Federal Register**), to agricultural employments. This proposal would therefore provide agricultural employees and their designated representatives with the right of access to relevant employer created or maintained medical and exposure records. Evidence presented at the rulemaking hearings on § 1910.20 indicated that access to records could be of significant occupational health benefit to agricultural employees. A thorough discussion of the justification for, and the issues raised by, this proposal may be found in the preamble to the final records access standard.

DATES: Comments must be submitted by August 21, 1980. Requests for a hearing must be submitted by June 23, 1980.

ADDRESS: Comments should be sent to: Docket Officer, Docket No. H-112B, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202-523-7894).

For additional copies of this notice contact the Publications Office, OSHA, Room S-1212C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, 202-523-8677.

FOR FURTHER INFORMATION CONTACT: Dr. Flo H. Ryer, Office of Special Standards Programs, Room N-3663, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202-523-7174)

SUPPLEMENTARY INFORMATION: OSHA has today promulgated a revised 29 CFR 1910.20 as a final standard entitled "Access to employee exposure and medical records." The standard was initially proposed on July 21, 1978 (43 FR 31371). Interested persons were given until September 22, 1978 to submit initial comments, and public hearings were held on the proposal in December, 1978 and January, 1979.

The standard generally provides that employees, their designated representatives, and OSHA shall have the right of access to relevant employee exposure and medical records made or maintained by employers. The standard does not require any employer to measure employee exposure to toxic substances or conduct medical surveillance of employees. However, if the employer undertakes these activities and makes records of the results, he is required under the standard to provide access for employees, designated representatives, and OSHA. The standard further provides that employee exposure records and analyses based on exposure and medical records must be kept for at least thirty years, and that medical records be kept for the duration of employment plus thirty years, although certain background data to the exposure records need only be kept for one year. (*See*, text of standard.)

As issued today, the final records access standard is applicable to employers in general industry, maritime and construction. It does not currently apply to agricultural employments. The purpose of this notice, therefore, is to propose the issuance of § 1910.20 as an agricultural standard, to be included as § 1928.20 of 29 CFR, so that agricultural employees have the same rights of access as other employees. If the agency decides after evaluating the comments received that § 1910.20 should be extended in its entirety to agricultural employers, this may be accomplished by simply modifying the "Scope and application" paragraph of 29 CFR 1910.20 to include agricultural employers, and also modifying Section 1928.21 to express the application of 29 CFR 1910.20 to agricultural employers. Necessary conforming amendments will also be made to existing agricultural standards such as the cotton ginning standard (29 CFR 1928.113).

Legal authority for this proposal derives from sections 6 and 8 of the Occupational Safety and Health Act (29 U.S.C. 655; 657). Section 6(b) of the Act authorizes the Secretary of Labor to promulgate, modify, or revoke by rule, any occupational safety and health standard. Section 6(b)(5) directs "the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, (to) set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity * * *" Sections 6(b)(7) and 8(c)(3) provide for employee or designated representative access to medical records and exposure monitoring records required by occupational safety and health standards. Section 8(c)(1) provides for OSHA access to records relevant to the Act. Section 8(g)(2) authorizes the Secretary to prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this Act.

During the rulemaking proceeding on the records access standard, several participants commented on the implied exclusion of agriculture. The Migrant Legal Action Program, Inc., (MLAP) (Docket H-112, Ex. 154) and the Health Research Group (HRG) (Docket H-112, Tr. 2032-4; Ex. 161) argued that agricultural workers should be included within the scope of a records access standard, since there is no rational basis for not doing so. MLAP stated that "the burden on the agricultural employer would be no greater than it would be for any other employer," while "the value of the regulation for farmworkers would be great." (Docket H-112, Ex. 154, p. 2). The AFL-CIO also supported this position (Docket H-112, Ex. 152, p. 32).

Both MLAP and HRG osbserved that agricultural employment is one of the most hazardous occupations:

> Nationwide, in 1977, there were an estimated 1800 accidental work-related deaths in agriculture. Fourteen percent (14%) of all work-related deaths occur in agriculture, and the annual death rate in agriculture is 53 per 100,000 workers. In 1977 one of 20 farmworkers suffered a disabling injury. This makes agriculture the third most hazardous industry in the United States, surpassed only by construction and mining/quarrying. (MLAP, Docket H-112, Ex. 154, p. 1)

HRG noted that farmworkers are often exposed to pesticides and other toxic substances during the course of their employment (Docket H-112, Tr. 2033). HRG also stated:

> Rarely if ever do farmworkers know the nature or extent of these exposures. And if a farmworker were to ask a labor contractor or grower for records which shed light on these exposures, the records would likely be destroyed and the farmworker fired.
>
> Without rules requiring agricultural employers to retain and disclose exposure and medical records, farmworkers will surely be denied the right to know about health hazards in their workplaces. (HRG, Docket H-112, Tr. 2033)

MLAP further stated that the need for farmworker access to exposure and medical information is reinforced by the limited resources of OSHA to inspect agricultural worksites (Docket H-112, Ex. 154, p. 2, 3).

OSHA finds MLAP's and HRG's comments to be persuasive. However,

since the proposed rule implicitly excluded agricultural employers from coverage, and these employers did not participate in the rulemaking proceeding, OSHA believes that a further opportunity for public input is appropriate before extending the scope of the records access standard to agricultural operations.

OSHA invites comments, objections, requests for hearings, or other recommendations from interested and affected parties on all issues raised by this proposal, including its economic impact. In particular, the agency invites responses to the following questions:

(1) To what extent do agricultural employers provide initial, periodic, or other medical examinations or biological monitoring to their employees, and under what circumstances are these tests performed?

(2) To what extent do agricultural employers use industrial hygiene services to assess the nature and extent of worker exposures to toxic substances and harmful physical agents?

(3) What kinds of records do agricultural employers create and maintain concerning the use of pesticides, fertilizers, or other toxic materials?

(4) What current mechanisms are used by agricultural employers to inform their employees of exposures to toxic substances and harmful physical agents?

(5) What if any alternatives to this proposal exist that could serve to inform agricultural employees of their exposures to toxic substances and harmful physical agents, as well as the resulting health consequences of these exposures?

(6) Are there any unique aspects to agricultural employment which merit changes to the provisions of the proposals?

Pursuant to 29 CFR 1911.11(b) and (c), interested persons may, in addition to filing written comments as provided above, file objections to the proposal and request an informal hearing in accordance with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections and request for a hearing must be postmarked on or before June 23, 1980;

3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken, and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Other comments must be submitted by August 21, 1980, to the Docket Officer, Docket No. H–112B, Room S6212, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. The evidence provided during the comment period, in addition to the evidence gathered during the rulemaking proceeding on 29 CFR 1910.20, will be evaluated to determine whether to extend these records access provisions to agriculture operations. The preamble to the final standard constitutes the rationale for this proposal, and the record developed on § 1910.20 will be part of the record of this proceeding.

Pursuant to Executive Order 12044 ("Improving Government Regulation", 43 FR 12660 (March 24, 1978)), and Department of Labor implementing guidelines (44 FR 5570; Jan. 26, 1979), OSHA rulemakings consider the issue of the overall impact of a rule on industry and the economy. A formal "Regulatory Analysis" is required where a rule has major economic consequences for the general economy, individual industries, geographical regions or levels of government. When OSHA issued the proposed access rule in July 1978, it determined that preparation of a formal Regulatory Analysis document in accordance with E.O. 12044 would not be necessary. OSHA based this determination on the fact that the final standard would neither mandate the creation of new records or reports, nor impose independent obligations on employers to monitor or measure employee exposures. The standard would not require employers to provide medical surveillance or examinations, nor would it establish other mandatory requirements as to the format or content of exposure and medical records. Therefore, while administrative costs would be incurred in preserving records and in providing access to them over and above current practices, there was no reason to believe that either of the two economic thresholds established in E.O. 12044 (an annual effect on the economy of $100 million or a major increase in costs or prices for individual industries, levels of government or geographical regions) would be exceeded.

The subsequent rulemaking proceeding supported OSHA's initial determination that the access rule was not a major rule. On the basis of that rulemaking, OSHA does not believe that extending the access standard to agricultural employers will pose substantial economic or other burdens on these employers. OSHA also anticipates no significant environmental impact by virtue of this proposal. As a result, the agency does not intend to prepare either a regulatory analysis or an Environmental Impact Statement for this proposed extension of 29 CFR 1910.20.

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Room S–2315, 200 Constitution Avenue, NW, Washington, DC 20210 (202–523–9261). Accordingly, pursuant to sections 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 1600, 29 U.S.C. 655, 657) and Secretary of Labor's Order No. 8–76 (41 FR 25059), it is proposed to amend 29 CFR Part 1928 by adding a new § 1928.20 and Appendices A and B to read as follows:

§ 1928.20 Access to employee exposure and medical records.

(a) *Purpose.* The purpose of this section is to provide employees and their designated representatives a right of access to relevant exposure and medical records; and to provide representatives of the Assistant Secretary a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this section, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this section is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

(b) *Scope and application.* (1) This section applies to each agricultural employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

(2) This section applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

(3) This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, both on an in-house or contractual (including fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which records are made or maintained.

(c) *Definitions.* (1) "Access" means the right and opportunity to examine and copy.

(2) "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

(3) "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

(4) "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

(5) "Employee exposure record" means a record containing any of the following kinds of information concernng employee exposure to toxic substances or harmful physical agents:

(i) Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

(ii) Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

(iii) Material safety data sheets; or

(iv) In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

(6)(i) "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including:

(A) Medical and employment questionnaires or histories (including job description and occupational exposures),

(B) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring),

(C) Medical opinions, diagnoses, progress notes, and recommendations,

(D) Descriptions of treatments and prescriptions, and

(E) Employee medical complaints.

(ii) "Employee medical record" does not include the following:

(A) Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and are not required to be maintained by other legal requirements,

(B) Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.), or

(C) Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

(7) "Employer" means a current employer, a former employer, or a successor employer.

(8) "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

(9) "Record" means any item, collection, or grouping of information regardless of the form of process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

(10) "Specific written consent" (i) means a written authorization containing the following:

(A) The name and signature of the employee authorizing the release of medical information,

(B) The date of the written authorization,

(C) The name of the individual or organization that is authorized to release the medical information,

(D) The name of the designated representative (individual or organization) that is authorized to receive the released information,

(E) A general description of the medical information that is authorized to be released,

(F) A general description of the purpose for the release of the medical information, and

(G) A date or condition upon which the written authorization will expire (if less than one year).

(ii) A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

(iii) A written authorization may be revoked in writing prospectively at any time.

(11) "Toxic substance or harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo-or hyperbaric pressure, etc.) which:

(i) Is regulated by any Federal law or rule due to a hazard to health,

(ii) Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (see Appendix B),

(iii) Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to, the employer, or

(iv) Has a material safety data sheet available to the employer indicating that

the material may pose a hazard to human health.

(d) *Preservation of records.* (1) Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

(i) *Employee medical records.* Each employee medical record shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period;

(ii) *Employee exposure records.* Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(A) Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) year; and

(B) Material safety data sheets and paragraph (c)(5)(iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

(iii) *Analyses using exposure or medical records.* Each anaylsis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

(2) Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

(e) *Access to records.* (1) *General.* (i) Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

(ii) Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

(A) A copy of the record is provided without cost to the employee or representative,

(B) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record, or

(C) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

(iii) Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that

(A) An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

(B) An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

(iv) Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.

(2) *Employee and designated representative access.* (i) *Employee exposure records.* Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, exposure records relevant to the employee consist of:

(A) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(B) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(C) Records containing exposure information concerning the employee's workplace or working conditions, and

(D) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

(ii) *Employee medical records.* (A) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in paragraph (e)(2)(ii)(D) below.

(B) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. Appendix A to this section contains a sample form which may be used to establish specific written consent for access to employee medical records.

(C) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(*1*) Consult with the physician for the purposes of reviewing and discussing the records requested,

(*2*) Accept a summary of material facts and opinions in lieu of the records requested, or

(*3*) Accept release of the requested records only to a physician or other designated representative.

(D) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(E) Nothing in this section precludes a physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

(iii) *Analyses using exposure or medical records.* (A) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(B) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social

security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.

(3) *OSHA access.* (i) Each employer shall, upon request, assure the immediate access of representatives of the Assistant Secretary of Labor for Occupational Safety and Health to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.

(ii) Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

(f) *Trade secrets.* (1) Except as provided in paragraph (f)(2) of this section, nothing in this section precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

(2) Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

(3) Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

(g) *Employee information.* (1) Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following:

(i) The existence, location, and availability of any records covered by this section;

(ii) The person responsible for maintaining and providing access to records; and

(iii) Each employee's rights of access of these records.

(2) Each employer shall make readily available to employees a copy of this standard and its appendices, and shall distribute to employees any informational materials concerning this standard which are made available to the employer by the Assistant Secretary of Labor for Occupational Safety and Health.

(h) *Transfer of records.* (1) Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

(2) Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

(3) Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

(i) Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

(ii) Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

(4) Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

(i) *Appendices.* The information contained in the appendices to this section is not intended, by itself, to create any additional obligations not otherwise imposed by this section nor detract from any existing obligation.

(j) *Effective date.* This section shall become effective on ————. All obligations of this section commence on the effective date except that the employer shall provide the information required under paragraph (g)(1) of this section to all current employees within sixty (60) days after the effective date.

Appendix A to [6] 1928.20 Sample Authorization Letter for the Release of Employee Medical Record Information to a Designated Representative

I, (full name of worker/patient)

hereby authorize (individual or organization holding the medical records)

to release to

(individual or organization authorized to receive the medical information) the following medical information from my personal medical records:

(Describe generally the information desired to be released)

I give my permission for this medical information to be used for the following purpose:

but I do not give permission for any other use or re-disclosure of this information.

(Note.—Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

Appendix B to § 1928.20—Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS) [1]

The final standard, 29 CFR 1910.20, applies to all employee exposure and medical

[1] On April 24, 1980, the Director of the Federal Register approved for incorporation by reference into 29 CFR Part 1910, the 1978 edition of the National Institute for Occupational Safety and

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records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents (paragraph (b)(2)). The term "toxic substance or harmful physical agent" is defined by paragraph (c)(11) to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analyses of these records) relevant to employees exposed to the substance.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS, and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by section 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669(a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Foreward and Introduction describes the RTECS as follows:

The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment. (p. iii)

This Registry contains 124,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry. (p. xiii)

The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous. (p. xiii)

In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters. (p. xiii)

It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences. (p. xiv)

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 (202–783–3238) (Order GPO Stock No. 017–033–00346–7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchased from the GPO for $14.00 (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at the OSHA Technical Data Center, Room N2439–Rear, United States Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 (202–523–9700), or at any OSHA Regional or Area Office (*See*, major city telephone directories under United States Government-Labor Department).

(Secs. 6(b), 8(c) and 8(g) (84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657), the Secretary of Labor's Order 8–76 (41 FR 25059) and 29 CFR Part 1911, Chapter XVII of Title 29)

Signed at Washington, D.C., this 14th day of May, 1980.

Eula Bingham,

Assistant Secretary of Labor.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

FEDERAL COMMUNICATIONS COMMISSION

25808 4–16–80 / FM broadcast assignment to Cape May Court House, N.J.; proceeding terminated

25806 4–16–80 / FM broadcast assignment to St. Simons Island and Waycross, Ga.; proceeding terminated

26707 4–21–80 / Radio Broadcast Services; FM broadcast assignment to Carthage and Whitehouse, Tex.

25400 4–15–80 / Radio Broadcast Services; FM broadcast assignment to Nederland, Tex.

25401 4–15–80 / Radio Broadcast Services; FM assignment to Vandalia, Mo.

INTERIOR DEPARTMENT

Fish and Wildlife Service—

27710 4–23–80 / Determination that the bonytail chub (gila elegans)

Rules Going Into Effect May 25, 1980

TREASURY DEPARTMENT

Internal Revenue Service—

27932 4–25–80 / Provision for compensation paid to appraisers of property seized as subject to forfeiture

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing May 21, 1980

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: June 27; July 11 and 25; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235. Gwendolyn Henderson, Assistant Coordinator, 202–523–5234.

CHICAGO, ILL.

WHEN: May 28 and 29; at 9 a.m. (identical sessions.)

WHERE: Room 204A, Dirksen Federal Bldg., Chicago, Ill.

RESERVATIONS: Call Ardean Merrifield, 312–353–0339.

PITTSBURGH, PA.

WHEN: June 4 at 1:30 p.m. and June 5 at 9 a.m. (identical sessions.)

WHERE: Rooms 2212 and 2214 (both days), Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa.

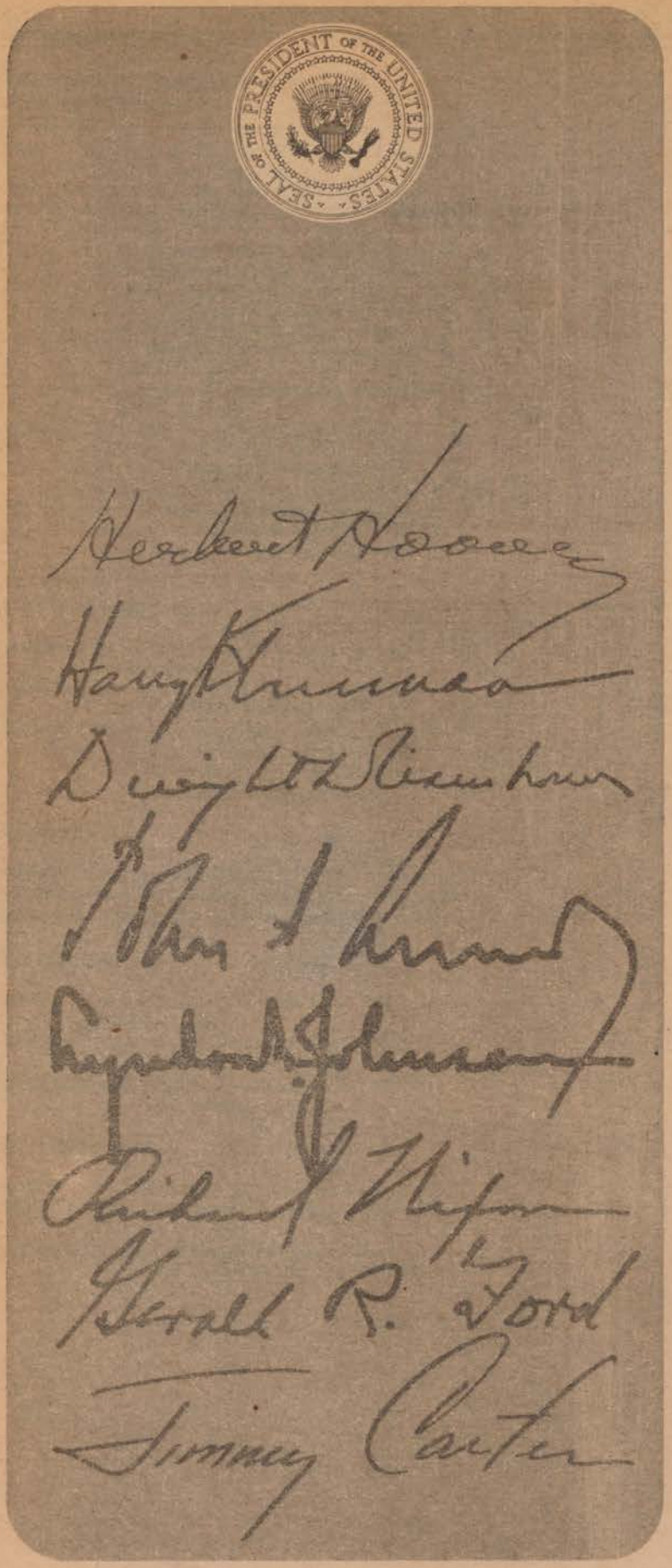
RESERVATIONS: Call Mary Silipo, Pittsburgh Federal Information Center, 412–644–3456.

ST. LOUIS, MO.

WHEN: June 24 and 25; at 9:00 a.m. (identical sessions.)

WHERE: Room 3720, Federal Office Bldg. 1520 Market Street, St. Louis, Mo.

RESERVATIONS: Call Evelyn Wiebusch, Federal Information Center, 314–425–4106.



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